

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Chapter 7 Case

SRC Holding Corporation,  
f/k/a Miller & Schroeder Financial, Inc.,  
and its subsidiaries,

BKY Case Nos. 02-40284 to 02-40286

Jointly Administered

Debtor.

Brian F. Leonard, Trustee,

ADV Case No. 034155

Plaintiff,

vs.

James E. Iverson,

**NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT**

Defendant.

To: Entities specified under Local Rule 9013-3.

1. James E. Iverson, by and through his undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 p.m. on May 5, 2004, before the Honorable Nancy C. Dreher, in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered no later than April 29, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than April 26, 2004, which is ten days before the time set for hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion under 28 U.S.C. § 157 and § 1334, Bankruptcy Rule 505 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on January 22, 2002. The case is now pending before this Court.

5. This motion arising under Bankruptcy Rule 7056 and Local Rule 9013. This motion is filed under Bankruptcy Rule 9014 and Local Rules 4002-2 and 9013-2 through 9013-4. Movant requests an Order granting summary judgment in favor of James E. Iverson dismissing Counts I through VII of Trustee's Complaint. The basis of Movant's request is summarized as follows:

A. Defendant is not an insider and no preferential transfers occurred within 90 days of the Petition date. Assuming *arguendo*, Defendant is an insider the alleged preferential transfers were made in the ordinary course of business.

B. With respect to Trustee's Count II (11 U.S.C. § 548, Fraudulent Transfer), all payments made to Iverson within one (1) year of the Petition date were made pursuant to agreements entered into in July 1997 were made for reasonably equivalent value and while the Debtor was solvent.

C. With respect to Count III (Uniform Fraudulent Transfer), as a matter of law, Defendant is entitled to judgment due to the fact that Plaintiff cannot prove the existence of a transfer. To the extent that an alleged transfer occurred, it would be deemed distributions pursuant to Minn. Stat. § 302A and as a matter of law may not be the subject of a claim under the Uniform Fraudulent Transfers Act. Furthermore, as constructive fraud theory fails due to the fact that the Debtor (Miller & Schroeder, Inc.) remained solvent after the alleged transfer. Claims made pursuant to Minn. Stat. § 593.45 must be dismissed due to lack of standing.

D. Defendant is entitled to judgment as a matter of law on Counts III through VII due to a release executed by the Debtor in December 2000.

E. To the extent a transfer could be established, Defendant would have a claim of setoff of equal amount.

F. Defendant is entitled to summary judgment on Count IV on the basis that Plaintiff cannot produce any evidence of breach of fiduciary duty by Defendant. Claims based upon purported illegal distributions are barred by Minn. Stat. § 302A.559 Subd. 2.

This motion is based upon the Affidavit of Joseph W. Lawver, Deposition of James Dlugosh, and Memorandum of Law filed herewith.

WHEREFORE, Movant request that the Court enter an Order as follows:

1. Granting summary judgment on Counts I through VII; and
2. For such other relief as the Court deems just and fair.

MESSERLI & KRAMER P.A.

Dated: March 22, 2004

/e/ Joseph W. Lawver  
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ATTORNEYS FOR PLAINTIFF

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SRC Holding Corporation,  
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Debtor.

Brian F. Leonard, Trustee,

ADV Case No. 034155

Plaintiff,

vs.

James E. Iverson,

**DEFENDANT'S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

Defendant.

**INTRODUCTION**

Defendant James E. Iverson submits this memorandum in support of his Motion for Summary Judgment as to all of Plaintiff's claims.

**STATEMENT OF FACTS**

Defendant James E. Iverson, together with Roger Wikner and Steven Erickson were owners of the securities brokerage firm Miller & Schroeder, Inc. James E. Iverson and Roger Wikner each owned 48.74% of the outstanding shares of common stock. Steven Erickson owned the remaining 2.52%. (Lawver Aff. Exh. G, Larson Depo. Exh. A, p. 4). Miller & Schroeder, Inc. Miller & Schroeder, Inc. was the parent corporation of Miller & Schroeder Financial, Inc., together with various other subsidiary corporations. (Dlugosh Depo. Exh. 3). An investment group, headed by James Dlugosch, a former Executive Vice President and Chief Operating Officer of Miller & Schroeder Financial, together with Ken Dawkins, President of C.H. Brown,

Paul Tietz, a partner in the law firm of Briggs and Morgan, Dave Malmberg, former President and Chief Executive Officer of National Computer Systems and Chairman of the Board of National City Bank, formed the holding company MI Acquisition Corporation for the purpose of acquiring all the outstanding shares of Miller & Schroeder, Inc. (Dlugosh Depo. Exh. 4). The intended purchase price for the stock was \$15,000,000.00, and conditioned in part upon James E. Iverson entering into an extended employment contract for three years and a non-compete agreement for seven years. (Dlugosh Depo. Exh. 4, 10). The purchase was also conditioned upon Roger Wikner signing a consulting agreement which included a non-compete clause. The purchaser, MI Acquisition Corporation, retained the law firm of Briggs and Morgan, Inc. and the accounting firm of KPMG to conduct its due diligence prior to the intended acquisition. (Dlugosh Depo. p. 17). The sellers were represented by the law firm of Leonard, Street and Deinard, P.A. The \$15,000,000.00 purchase price was to be funded by \$6,500,000.00 of capital investment into MI Acquisition Corporation, \$5,000,000.00 of bank financing, \$2,000,000.00 of subordinated debt, together with an estimated 1,500,000.00 of proceed from payment of notes receivable from Roger Wikner and James E. Iverson to Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc. (Dlugosh Depo. p. 9-11).

In June 1997, the Stock Purchase Agreement was executed by Roger Wikner, James E. Iverson and Steve Erickson as sellers, and MI Acquisition Corporation dated June 20, 1997, effective as of June 1, 1997, with disbursements taking place on July 31, 1997. The purchase price for James E. Iverson's stock was \$7,310,725.55. Out of these proceeds, \$500,000.00 were wire transferred to Mid America Bank. \$530,000.00 were wire transferred to The American Bank. \$808,289.79 were withheld at closing as payment to Miller & Schroeder, Inc. for notes receivable and interest, and \$382,661.79 were withheld at closing for payment to Miller &

Schroeder Financial, Inc. as repayment of a note receivable, interest, bonus advances, and expense reimbursements. The net proceeds at closing paid to James E. Iverson were \$5,089,261.64. Pursuant to the Stock Purchase Agreement, all amounts owed by James E. Iverson to Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc. were paid at closing with James E. Iverson being provided a receipt of payment, together with the cancelled Promissory Notes. (Lawver Aff. Exh. G; Iverson Depo. Exh. 12). Simultaneously with the payment of the Promissory Note, MI Acquisition Corporation received inter-company transfers from Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc. in the combined amount of \$2,001,548.00, which amount coincided with the repayment of loans, advances and expense reimbursements from Roger Wikner, James E. Iverson and Scott Erickson. James E. Iverson submitted his resignation as Director of Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc. effective July 31, 1997. (Dlugosh Depo. p. 13-17, Exh. 1, 3, 5). As of the date of closing, the financial condition of Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc. were unaffected by the sale of stock to MI Acquisition Corporation. (Dlugosh Depo. p. 54, 55).

The definitive stock purchase agreement contained a provision for a "Purchase Price Adjustment" after final review of the "Closing Financial Statements." (Dlugosh Depo. Exh. 1). The Adjusted Purchase Price was \$13,767.029. James Iverson and Roger Wikner each repaid principal and interest to MI Acquisition Corporation in the amount of \$680,616. Steve Erickson was required to repay \$32,172 in principal and interest. (Lawver Aff. Exh. G., Iverson Depo. Exh. 13; (Lawver Aff. Exh. F, Larson Depo. Exh A, p. 4).

A final report of sale was prepared by Miller & Schroeder, Inc.'s CPA firm, Arthur Anderson, LLP, and provided to the respective selling shareholders. James Iverson, through his

personal CPA firm, prepare and filed tax returns which included recognition of capital gains on receipt of \$6,704,931 as the purchase price for his stock. (Lawver Aff. Exh. F, Larson Depo. p. 8-11, Exh. A, p. 4).

A Settlement Agreement was entered into between the Sellers and MI Acquisition Corporation on December 11, 1997. The Agreement memorialized the Purchase Price Adjustments and provided for a mutual release for all claims "arising under or related to" the purchase price adjustment provisions contained in Section 2.3 of the Stock Purchase Agreement. (Lawver Aff. Exh. G; Iverson Depo. Exh. 13, sec. 5).

MI Acquisition Corporation was formed on March 25, 1997. At no time has James E. Iverson been an officer or director of MI Acquisition Corporation. On May 8, 2000, pursuant to Minn. Stat. § 302(a), MI Acquisition Corporation merged with Miller & Schroeder, Inc., and MI Acquisition Corporation continuing as the surviving entity. MI Acquisition Corporation then changed its name to Miller & Schroeder, Inc. effective May 8, 2000. Effective with the merger, Miller & Schroeder, Inc. ceased to exist with the surviving corporation, agreeing to be responsible and liable for all liabilities and obligations of Miller & Schroeder, Inc. (Lawver Aff. Exh. A)

Pursuant to the Non-Competition Agreement, during the period of one year prior to the Debtor's filing bankruptcy, James Iverson received monthly payments of \$1,200 for his agreement not to compete. Payments were received on a timely basis between January 2001 and August 2001 . (Lawver Aff. Exh. G; Iverson Depo. Exh. 15).

## **ARGUMENT**

### **I. STANDARD FOR SUMMARY JUDGMENT**

The standard for summary judgment in an adverse bankruptcy proceeding is outlined in Fed. R. Civ. P. 56(c)<sup>1</sup>:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The plain language of Rule 56(c) mandates the entry of judgment, after adequate time for discovery and upon a motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 106 (1986). In such situation there can be "no genuine issue as to any material fact," since complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Id.

The movant must "affirmatively show the absence of evidence in the record" as to at least one element of Plaintiff's case. Hanson v. F.D.I.C., 13 F.3d 1247, 1253 (8<sup>th</sup> Cir. 1994). Once the movant has done this, the burden shifts, and the Plaintiff must produce evidence, as listed in Rule 56(c), except for the mere pleadings themselves, that is significant, probative, and substantial. In re Northgate Computer Systems, 240 B.R. 328, 336 (Bankr.D.Minn. 1999). If the Plaintiff produces no responsive evidence; if its evidence does not have the probity and substance required to meet its initial burden at trial; or if the basic evidence does not logically support an inference that is necessary to prove up the element, then the motion proceeds to the legal step-whether the movant is entitled to judgments as matter of law. Id. A lack of proof as to one or more elements of the Plaintiff's claim will require that the motion be granted. Celotex at 322.

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<sup>1</sup> Fed. R. Bankr. P. 7056 makes Fed. R. Civ. P. 56 applicable to adversary proceedings in bankruptcy.

**II. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I OF TRUSTEE'S COMPLAINT DUE TO PLAINTIFF'S INABILITY TO ESTABLISH ANY PREFERENTIAL TRANSFERS WERE MADE TO DEFENDANT.**

Through discovery Defendant has been able to glean that the purported preferential transfers were payments made pursuant to the Non-Competition Agreement entered into between Miller & Schroeder, Inc. and Defendant in July 1997. Between the period of January 2001 and August 2001, Defendant received monthly payments of \$1,200.00 for continued compliance with the Non-Competition Agreement. These payments were made at the end of each month on a timely basis. Effective November 1, 2000, Iverson's Employment Agreement with Miller & Schroeder Financial, Inc. was amended such that he would perform services upon a part-time basis. Although he maintained the title of Executive Vice President, he did not hold an officer's position as defined by the bylaws of Miller & Schroeder Financial, Inc., nor did he assert or have the ability to assert any financial or managerial control over this entity.

**(a) Iverson was not an insider of Debtor during the period January through August, 2001.**

The determination as to whether a party is an insider is "determined on a case by case basis based on the totality of the circumstances and the creditor's degree of involvement in the Debtor's affairs". In re: Boston Pub. Co., Inc., 201 B.R. 157 (Bankr.D.Mass. 1997).

11 U.S.C. § 547(b)(4)(B) permits the recovery of transfers made by the debtor within 90 days of filing a bankruptcy petition. If the transferee is a "insider," transfers occurring within one year before the bankruptcy filing may be recovered as a preferential transfer. 11 U.S.C. § 547(b)(4)(B). The Bankruptcy Code defines an insider of a corporation as a "(i) director of the debtor; (ii) officer of the debtor; [and] (iii) person in control of the debtor..." 11 U.S.C. § 101(31)(b).

Insider status is "determined on a case by case basis based on the totality of the circumstances and the creditor's degree of involvement in the debtor's affairs." In re: Boston Pub. Co., Inc., 209 B.R. 157 (Bankr.D.Mass. 1997). "[T]he person or entity must have at least a controlling interest in the debtor,...or that person must exercise sufficient authority over the debtor so as to unqualifiedly dictate corporate policy and the disposition of assets." In re: Babcock Dairy Co. of Ohio, Inc., 70 B.R. 657, 661 (Bankr.D.N.D. Oh 1986).

During the period of January 2001 through August 2001, Defendant was employed on a part-time basis with no control over the policies or distributions of assets of the Debtor. Pursuant to a Non-Competition Agreement entered into in July 1997, Defendant received monthly payments of \$1,200.00 per month while he honored his contract. On September 1, 2001, Defendant became employed by the Marshall Group which assumed the obligation to make payments under the Non-Compete Agreement. Therefore, no payments were made by the Debtors within the 90 day preference period. Absent Plaintiff providing evidence that Defendant was an insider, Defendant is entitled to summary judgment as a matter of law.

- (b) Assuming Plaintiff can make a prima facie showing that Defendant was an insider, Defendant is still entitled to summary judgment due to the fact that the payments were made in the ordinary course of business and excepted pursuant to 11 U.S.C. § 547(c).**

11 U.S.C. § 547(c) states in pertinent part that:

- (c) The trustee may not avoid this section a transfer...
- (2) To the extent that such transfer was...
  - (A) In payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;
  - (B) Made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) Made according to the ordinary business terms...

The alleged transfers by debtor to Plaintiff were payments made pursuant to a Non-Competition Agreement entered into in July 1997. During the period of January through August 1997, Defendant received monthly payments of \$1,200.00 pursuant to the terms of the Non-Competition Agreement which payments were made monthly on a timely basis at the end of each month and, therefore, were made in the ordinary course of business. While there is no precise legal test which can be applied in determining whether payments made by the Debtor are made in the ordinary course of business, it is clear that payments made pursuant to the agreement between the parties on a timely basis and consistently over a period of time are within the ordinary course. "The cornerstone of this element of a preference defense is that the creditor needs to demonstrate some consistency with other business transactions between the debtor and the creditor." See In re: Spirit Holding Co., Inc., 214 B.R. 891, citing Lovett, 931 Fd2d at 497, *quoting* In re: Magic Circle Energy Corp., 64 B.R. 269, 272 (Bkrcty W.D. Ok. 1986). Therefore, the purported preferential transfers are accepted pursuant to 11 U.S.C. § 547(c).

**III. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT DUE TO AN ABSENCE OF EVIDENCE TO ESTABLISH ANY OF THE ELEMENTS UNDER THE UNIFORM FRAUDULENT TRANSFERS ACT.**

The Uniform Fraudulent Transfer Act, [hereinafter "UFTA"], provides remedies to creditors who are aggrieved by fraudulent transfers made by a debtor. In re Metropolitan Steel Fabricators, Inc., 191 B.R. 150, 153 (Bankr.D.Minn. 1996). The Plaintiff bases Count III of its Complaint on Minn.Stat. §§ 513.44(a) and 513.45. Defendant addresses both bases for recovery respectively below.

**A. Claims made pursuant to Minn. Stat. § 513.44(a) are unsupportable by the evidence.**

Minn. Stat. § 513.44(a) permits relief upon a showing of actual or constructive fraud.

This section provides that:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) without receiving a reasonable equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they become due.

**a) Plaintiff's claim is premised upon an alleged "forgiveness of debt" which cannot be supported by the evidence.**

The first element that must be established in a fraudulent transfer case is that a transfer occurred. Though not apparent from plaintiff's complaint during discovery counsel for the plaintiff has acknowledged the alleged fraudulent transfer is the forgiveness of notes and advances owed by the Defendant to Miller & Schroeder Inc and one of its subsidiaries Miller & Schroeder Financial, Inc. However, Plaintiff has not and cannot point to single piece of evidence to support this allegation. To the contrary, there is an abundance of documentary evidence and testimony from the principals involved evidencing that Iverson, along with Roger Wikner and Steven Erickson paid either Miller & Schroeder, Inc. or Miller & Schroeder Financial, Inc. at closing as required by section 5.5 of the Stock Purchase Agreement. The court's attention is directed to the follow documentary evidence all of which was in the Trustee's custody and control prior to commencement suit.

First, the Closing Statement Certificate and Receipt details proceeds withheld from the amounts to be disbursed to the sellers. Payments made to Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc. pursuant to section 5.5 were as follows.

**FROM ROGER WIKNER**

Miller & Schroeder, Inc.		
Life Insurance	57,056.61	
Life Insurance	15,786.16	
Life Insurance	4,139.46	
Note recievable	100,000.00	
Interest receivable	10,183.89	
Note receivable	225,000.00	
Interest receivable	11,466.00	
Miller & Schroeder Financial, Inc.		
Note receivable	54,932.00	
Interest receivable	2,628.54	
Country club	81,000	
Bonus Advances	175,000.00	
Expense reimbursements	45,007.62	
Aviation Charter receivable	13,792.01	
	795,992.29	\$795,992.29

**FROM JAMES E. IVERSON**

Miller & Schroeder, Inc.		
Note receivable	452,651.81	
Interest receivable	50,859.58	
Note receivable	290,000.00	
Interest receivable	14,778.40	
Miller & Schroeder Financial, Inc.		
Note receivable	240,486.00	
Interest receivable	11,507.46	
Bonus advances	115,000.00	
Expense reimbursements	15,668.33	
	1,190,951.58	\$1,190,951.58

**FROM STEVEN W. ERICKSON**

Miller & Schroeder Financial, Inc.		
Country club	12,321.25	
Travel advances	2,282.95	
	14,604.20	\$14,604.20

**TOTAL** **\$2,001,548.07**

Further, evidence of payment is the fact that Iverson and Wikner received cancelled promissory notes. The purchaser, MI Acquisition Corporation, advised Norwest Bank which was

going to provide loans in part to purchase the stock and a working capital line of credit that part of the purchase would be funded out of the proceeds from payment on Iverson's and Wikner's notes. (Dlugosh Depo. Exh. 2). This statement of intent was consistent with the Confidential Memorandum authored in part by Dlugosh in March of 1997. (Dlugosh Depo. Exh.4 ).

The internal financial statement prepared by Miller & Schroeder, Inc reflect that as of July 31,1997, neither, Iverson, Wikner nor Erickson had notes receivable or advances owed to Miller & Schroeder, Inc. Rather, the financial record do memorialize an advance to MI Acquisition Corporation in the exact amount of \$2,001,548. (Dlugosh Depo. Exh. 3., p.3)

The Stock Purchase Agreement provided for an adjustment to purchase price after the purchaser's CPA firm, KPMG Pete Marwick LLP audited the final closing financial records. Had the loans to officers and shareholders been "forgiven" there would have been a corresponding reduction in book value of the company. There were adjustments to the purchase price base upon a reduction in book value. However, these adjustments were due to other financial factors using generally accepted accounting practices. In fact sellers repaid to MI Acquisition Corporation \$1,393,404 as documented by a December 11 Settlement Agreement which included a mutual release. (Lawver Aff. Exh G, Iverson Depo. Exh. 13)

Further evidence of payment can be found in the private placement memorandum prepared by MI Acquisition Corporation in September 1997 which states in pertinent part that the purchase of Miller & Schroeder, Inc was funded in part by 2 million dollars from the assets of Miller & Schroeder, Inc. (Lawver Aff. Exh. C)

Given this uncontroverted evidence the court must as a matter of law grant summary judgment due to Plaintiff's inability to produce any evidence of a transfer.

**b) Plaintiff has produced no evidence which will support a claim of actual fraud.**

To prevail under Minn.Stat. § 513.44(a)(1), actual fraud, Iverson must have intended to hinder, delay or defraud a creditor. Actual intent may not be presumed, but actual intent may be established by a through examination of circumstantial evidence or badges of fraud. U.S. v. Scherping, 187 F.3d 796 (8<sup>th</sup> Cir. 1999).

Bankr.R.7009 requires that in averments of fraud, the circumstances shall be stated with particularity. In civil cases, failure to plead fraud with particularity justifies summary judgment against the party alleging the fraud claim..

Plaintiff has not produced any possible badges of fraud. Plaintiff has not alleged a single fact that suggests Iverson intended to hinder, delay or defraud a creditor. There is a complete absence upon the record of evidence proving the element of Iverson's intent to commit fraud. If Plaintiff cannot produce probative, substantive evidence that could logically support an inference that is needed to prove up the element of intent to commit fraud, then Defendant is entitled judgment as a matter of law.

To prevail under the section prohibiting constructive fraud, Minn.Stat. § 513.44(a)(2), SRC Holdings Corporation [hereinafter "SRC"] must have received less than a "reasonable equivalent value" for the transfers and either was left with an "unreasonably small" amount of assets to carry on its business or intended to or should have foreseen that it would incur debts beyond its ability to pay as they became due. In re Metropolitan at 154. Whether a transfer is made for a reasonably equivalent value is a question of fact. Id. The burden is on the trustee to show by a preponderance of the evidence that the debtor did not receive reasonably equivalent value for a transfer. Id.

Plaintiff has not met his burden. All evidence prove as a matter of law the debts were paid in full.

- c) **Assuming arguendo that Plaintiff's assertion that the Iverson notes were forgiven they cannot be the basis of a fraudulent transfer claim under Minn. Stat. § 513.41 to § 513.51.**

The alleged forgiveness of debt would constitute a corporate distribution under Minnesota corporate law. The Minnesota Business Corporation Act. Minn.Stat. § 302A.011(10) defines a distribution as:

...a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

The provisions of sections 513.41 to 513.51 (Minnesota's Fraudulent Transfer Act) do not apply to distributions made by a corporation governed by Chapter 302A. See Minn.Stat. § 302A.551(3)(d). Therefore, since Plaintiff's claims are defined as corporate distributions by the Minnesota Business Corporation Act, Iverson should be granted summary judgment upon Plaintiff's constructive fraud claim because the Fraudulent Transfer Act does not apply. In re Metropolitan at 152.

- d) **Even assuming Minn. Stat. § 302A.551(3)(d) doesn't preclude the assertion of a fraudulent transfer, Plaintiff's constructive fraud theory fails due to the fact that Miller & Schroeder remained solvent after the alleged transfer.**

The Independent Auditors' Report conducted by KPMG Peat Marwick LLP opined that as to "the financial position of MI Acquisition Corporation and subsidiaries as of October 31, 1998 and 1997, and the results of their operations and their cash flows for the year ended October 31, 1998 and period from August 1, 1997 to October 31, 1997, in conformity with generally accepted accounting principles. As of October 1997 total shareholder equity was \$8,159,751. In 1998 shareholder equity increased to \$9,387,101. (Lawver Aff. Exh.B, KPMG 0346). Under the Minnesota Uniform Fraudulent Transfer Act as debtor is solvent if the sum of

its assets or greater than its debts at a fair valuation. Minn. Stat. § 513.42. Plaintiff has failed to produce any evidence of insolvency. Again, summary judgment is required.

**B. Claims made pursuant to Minn. Stat. § 513.45 must be dismissed for lack of standing.**

Plaintiff alleges that Defendant's actions were in violation of Minn.Stat. § 513.45. Minn.Stat. § 513.45 supplies a remedy for creditors whose claims were in existence at the date of the challenged transfer. The statute provides:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Standing to bring suit is a jurisdictional issue, derived from the "case or controversy" requirement, under Article III, section 2 of the United States Constitution, and is therefore a threshold issue in all cases seeking to be heard in federal court. Wight v. Bankamerica Corp., 219 F.3d 79, 86 (2d Cir. 2000). To meet constitutional requirements, a party must have a "personal stake in the outcome of the controversy. Shearson Lehman Hutton, Inc. v. Wagoner, 944 F.2d 114 (2d Cir. 1991). Because standing is a jurisdictional matter, the burden is on the Plaintiff "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." Thompson v. County of Franklin, 15 F.3d 245, 249 (2d Cir. 1994). Plaintiff has not alleged nor is he able to demonstrate that any creditor with claims against Miller & Schroeder, Inc. in July 1997 have not been satisfied. Absent this showing § 513.45

claims relating to the stock sale between Defendant and MI Acquisition Corporation in July 1997 must be dismissed. See, In re Jollys, Inc., 188 B.R. 832 (Bankr. D. Minn. 1995).

**IV. PLAINTIFF'S CLAIMS OF FRAUDULENT TRANSFER ARE BARRED DUE TO SETOFF.**

Assuming *arguendo* that Defendant did not pay the notes and advances at closing, it must follow that he would have a claim of equal amount against MI Acquisition Corporation. Plaintiff does not dispute the fact that the proceeds distributed by wire transfer to Iverson at closing were \$5,089,261.64, nor that \$500,000 was wired to MidAmerica Bank and another \$530,512.33 to The America Bank as evidenced by exhibit A to the Closing Statement Certificate and Receipt. (Dlugosh Depo. Exh. 1). This totals \$6,119,773.97. The purchase price for Iverson's shares was \$7,310,725.55. If the difference of \$1,190,951.58 was not paid to Miller & Schroeder, Inc. and Miller & Schroeder Financial, Inc., as stated in the closing statement, it follows that MI Acquisition Corporation would still owe \$1,190,951.58 to Iverson.

On May 8, 2000, MI Acquisition Corporation merged with Miller & Schroeder, Inc. with MI Acquisition being the surviving entity. MI Acquisition Corporation assumed the name Miller & Schroeder, Inc. and on October 16, 2001 changed its name to SRC Holding Corporation, the Debtor. Thus, the Plaintiff's claims are barred due to setoff.

**V. THE DECEMBER 11, 1997 MUTUAL RELEASE EXECUTED BY THE DEBTOR AND THE DEFENDANT BARS THE TRUSTEE'S CLAIMS UNDER COUNTS III THROUGH VI.**

The Trustee contends that there was no consideration given for the 1997 Stock purchase transaction between the Debtor and Defendant, and that the transaction, therefore, amounted to a forgiveness of debt, i.e., "Released Obligations". *Assuming arguendo* that the Trustee is correct in such assertion, then the Mutual Release executed by the parties to the transaction bars the

Trustee's current claims. If the Debtor would have been bound by the Mutual Release, then the Trustee is bound by the same.

Section 2.3 of the 1997 Stock Purchase Agreement contained a purchase price adjustment section which factored the adjusted "Book Value" of the company, as of closing, into the final calculation of closing price. (See Dlugosh Depo. Exh. 1; Lawver Aff. Exh. G). "Book Value" was defined in the agreement as total assets minus total liabilities. If the transaction amounted to a forgiveness of debt, as the Trustee contends, then such forgiveness would have been reflected in the Book Value as a reduction of assets of the Debtor. The forgiveness of debt, therefore, was directly related to the calculation of the purchase price adjustment pursuant to Section 2.3 of the 1997 Stock Purchase Agreement. At the final closing of the transaction, the parties entered into a Settlement Agreement which reflected the final adjusted Book Value and, therefore, the final purchase price. Section 5 of such Settlement Agreement provides the following:

The parties hereto agree to the mutual release and discharge of any and all claims, demands, obligations, actions, causes of action, damages, costs, debts, liabilities, or expenses arising under or related to Section 2.3 of the Stock Purchase Agreement...

Any "forgiveness of debt" would directly impact the Book Value, which, in turn, was a variable in the final calculation of the purchase price. In other words, any forgiveness of debt would relate to Section 2.3 of the Stock Purchase Agreement. Any "claims, demands, obligations, actions, causes of action, damages, costs, debts, liabilities, or expenses..." related to the forgiveness of debt, i.e., Section 2.3 of the Stock Purchase Agreement, have been released by the Debtor. Id. The Debtor, in this case, would be bound by the executed release.

"The general rule is that 'the trustee succeeds only to such rights as the bankrupt possessed; and the trustee is subject to all claims and defenses which might have been asserted against the bankrupt but for filing the petition.'" In re Ehrhart, 155 B.R. 458 (Bkrcty. E.D.

Mich., 1993) *citing* Bank of Marin v. England, 385 U.S. 99 at 101, 87 S.Ct. 274 (1966). Since the Trustee steps into the shoes of the Debtor, the Trustee is also bound by the terms of a valid release. In re Circle P Enterprises, Inc., 1998 WL 34065296 (Bkrtcy. C.D. Ill., 1998). "If the release is binding as to [the Debtor], it is binding as to the Trustee...absent any allegation of grounds which would justify setting the release aside, such as fraud, duress, illegality, or mutual mistake, the release stands..." *Id.* at 6. The release in question is clear and unambiguous, and there has been no allegation by the Trustee of fraud, duress, or other illegality regarding its execution. The release, therefore, is valid, and the Trustee must be bound by its terms. Furthermore, in order for the Trustee to survive Defendants summary judgment motion, the Trustee must "demonstrate that there exists a 'genuine issue of material fact' as to the invalidity of the release. The Trustee has not, and cannot, do so. Where the terms of a release, along with the circumstances surrounding its execution, make the intended finality of the release of all claims for known and unknown injuries apparent, the defendant is entitled to judgment as a matter of law. Jeffries v. Gillitzer, 302 Minn. 402, 225 N.W. 2d 17 (1975).

The release was validly executed, and the Trustee, therefore, must be bound by its terms. Since the subject matter of the release includes the Trustee's alleged forgiveness of debt, the Trustee is barred from bringing the current actions in respect to the 1997 Stock Purchase transaction. The Defendant is entitled to judgment as a matter of law. Summary Judgment should be entered in favor of the Defendant.

**VI. SUMMARY JUDGMENT IS APPROPRIATE AS TO COUNT IV SINCE PLAINTIFF HAS NEITHER PLEAD NOR PRODUCED ANY EVIDENCE THAT PLAINTIFF BREACH A FIDUCIARY DUTY.**

Plaintiff alleges that Defendant had a duty of loyalty to the Debtors pursuant to Minnesota common law, and Minn. Stat. §§ 302A.251 and 255. (Compl. ¶ 38.). Plaintiff's

Complaint once again fails to state with particularity what actions defendant took to "cause the Transfers". (Compl. ¶ 39). Even under liberal pleading standards a complaint must disclose sufficient information to permit the defendant to have a fair understanding of what plaintiff is complaining about. However, even if Iverson did have a duty of loyalty at the time of the Stock Purchase Agreement he did not breach that duty.

As to officers and directors, the idea that they owe a fiduciary duty of loyalty when they serve as officers, has been a fixture in Minnesota law for over a century. In re Northgate at 356. This duty requires officers and directors not to purchase property of the corporation for their own benefit, to exercise their powers solely for the benefit of the corporation and its shareholders, and to generally discharge their duties in good faith. Id.

Minnesota appellate courts have recognized that at least certain types of shareholders owe fiduciary duties to the corporation. Westgor v. Grimm, 318 N.W.2d 56, 58 (Minn. 1982).

Absent a transfer restriction, a stockholder, whether director or not, has a perfect right to sell or otherwise dispose of or encumber his stock. Roger v. Drewry, 264 N.W. 225 (Minn. 1935). Therefore by simply selling his stock, Iverson did nothing wrong. During the purchase and acquisition of Iverson's stock by MIAC, Iverson paid his promissory notes to MSI and MSFI, which was notably deducted from Iverson's Net Proceeds. Iverson's action were not in bad faith, and Plaintiff has not set forth any evidence that would support judgment in his favor. Therefore, Iverson is entitled judgment as a matter of law.

Assuming arguendo that Defendant did cause a distribution. Minn. Stat. § 302A.551 provides in pertinent part:

**Subdivision 1. When permitted.** (a) The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after

making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.

**Subd. Determination presumed proper.** A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed in compliance with the standard of conduct provided in section 302A.251 on the basis of financial information prepared in accordance with accounting methods.....No liability under § 302A.251 or § 302A.559 will accrue if the requirements of this subdivision have been met.

The audited financial record of Miller & Schroeder, Inc. evidence that there was total shareholder equity of \$8,159,750 on October 31,1997.(Lawver Aff. Exh. B). Assuming, there was a distribution rather than an advance to the then parent MI Acquisition Corporation the shareholder equity would have been reduced by \$2,001,548. This would have left \$6,158,202 of shareholder equity. Clearly, there was more than enough to allow the corporation pay its debts in the ordinary course. The court has the benefit of hind sight to see that the corporations continued to pay their debts in the ordinary course of business for many years after the alleged distribution. Again, summary judgment is proper.

#### **VII. PLAINTIFF'S CLAIMS FOR BREACH OF FIDUCIARY DUTY ARE BARRED BY THE STATUTE OF LIMITATIONS.**

Assuming the transfers complained of in count IV of Plaintiff's complaint are the purported forgiveness of the notes and advances Iverson owed to corporations. These transfer would constitute distributions pursuant to Minn. Stat. § 302A.011 (10). The liability of directors and shareholders for illegal distribution is governed by Minn. Stat. § 302A.557 and § 559 respectively. Assuming Defendant had violated his fiduciary duty and caused an illegal distribution, Plaintiff's claims are barred by the two year statute of limitations. See, Minn. Stat. § 302A.557 subd.2 and § 302A559 subd.2. Thus summary judgment is appropriate.

#### **VIII. PLAINTIFF CANNOT MEET ITS BURDEN UNDER 11 U.S.C. § 548(a)(1)(B). ALL PAYMENTS RECEIVED WERE IN EXCHANGE FOR REASONABLY EQUIVALENT VALUE.**

In order for the Trustee to prevail on the claim under 11 U.S.C. § 548(a)(1)(B), he must prove, by a preponderance of evidence, that the payments to Defendant were not made in exchange for reasonably equivalent value. 11 U.S.C. § 548(a)(1)(B); In re: Richards & Conervers, Steel Co., 267 B.R. 602 (8<sup>th</sup> Cir. BAP 2001); Norberg v. Arab Banking Corp. (In re: Chase & Sandborne Corp.). For purposes of § 548 "value means property and satisfaction or securing of a present or antecedent debt of the debtor..." 11 U.S.C. § 548(d)(2)(A). The payments made to Iverson were made pursuant to a Non-Compete Agreement entered into in July 1997 and clearly were satisfaction of an antecedent debt. James Dlugosh specifically testified that the retention of an extended non-compete agreement from Iverson was essential and a condition of entering into the Stock Purchase Agreement. Plaintiff has produced no evidence that payments under the Non-Compete Agreement were not in exchange for reasonable equivalent value. As such, claims pursuant to 11 U.S.C. § 548 should be dismissed as Plaintiff cannot meet its burden.

**IX. PLAINTIFF HAS FAILED TO PRODUCE ANY EVIDENCE WHICH COULD SUPPORT A CLAIM OF CONVERSION.**

Conversion is an act of willful interference with chattel, done without lawful justification, by which any person entitled thereto is deprived of use and possession. Larson v. Archer-Daniels-Midland Co., 32 N.W.2d 649 (Minn. 1948). The two essential elements of a cause of action for conversion are property in the plaintiff, either general or special, and a conversion by the defendant. Id. If the conversion was with the knowledge and consent of the owner, the owner cannot recover. First & Farmers State Bank v. Crosby, 256 N.W. 315 (Minn. 1934). Assuming that the claimed transfers were made, they were made with the consent of the owners and, therefore, cannot be the basis for a conversion claim.

Defendant has failed to show that Plaintiff has willfully taken, thus converted, any of the debtor's property. Therefore, Plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, and on which Plaintiff will bear the burden of proof at trial. There is "no genuine issue as to any material fact," since complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

### **CONCLUSION**

For the foregoing reasons, Summary Judgment should be granted to Defendant on all counts.

MESSERLI & KRAMER P.A.

Dated: March 22, 2004

By: /e/ Joseph W. Lawver  
Joseph W. Lawver (#151269)  
1800 Fifth Street Towers  
150 S. Fifth Street  
Minneapolis, MN 55402-4218  
(612) 672-3600

ATTORNEY FOR DEFENDANT

571031.1

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Chapter 7 Case

SRC Holding Corporation,  
f/k/a Miller & Schroeder Financial, Inc.,  
and its subsidiaries,

BKY Case Nos. 02-40284 to 02-40286

Jointly Administered

Debtor.

Brian F. Leonard, Trustee,

ADV Case No. 034155

Plaintiff,

vs.

**AFFIDAVIT OF JOSEPH W. LAWVER**

James E. Iverson,

Defendant.

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN    )

Joseph W. Lawver, being first duly sworn upon oath, deposes and states as follows:

1. At all times material, your Affiant is and has been counsel for Defendant James E. Iverson.
2. Attached hereto and incorporated by reference as Exhibit A are the public records obtained from the Secretary of State identifying the registration and history of MI Acquisition Corporation and its subsequent merger with one of its subsidiaries, Miller & Schroeder, Inc. with MI Acquisition Corporation being the surviving entity.
3. Attached hereto and incorporated by reference as Exhibit B are true and correct copies of working papers produced by KPMG, Pete Marwick, LLP, bates numbers 0001, 0077, 0342 through 0346.

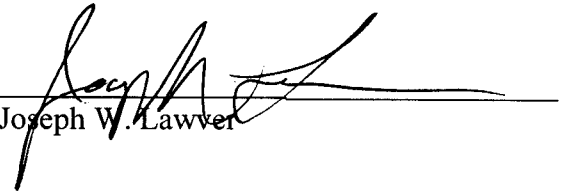
4. Attached hereto and incorporated by reference as Exhibits C, D and E, are excerpts from the Private Placement Memorandum of MI Acquisition Corporation as amended September 11, 1997; Independent Auditors' Report prepared by KPMG of MI Acquisition Corporation and Subsidiaries for October 31, 1999 and 1998; and Independent Auditors' Report prepared by KPMG of Miller & Schroeder, Inc. and Subsidiaries, October 31, 2000 and 1999.

5. Attached hereto and incorporated by reference as Exhibit F are true and correct copies of excerpts from the deposition of David B. Larson, conducting on January 23, 2004.

6. Attached hereto and incorporated by reference as Exhibit G are true and correct copies of excerpts from the deposition of James E. Iverson, taken on January 23, 2004.


FURTHER YOUR AFFIANT SAITH NOT.

Dated: 3/22/04

  
Joseph W. Lawver

Subscribed and sworn to before me

this 22nd day of March, 2004.

  
Notary Public



571925.1

State of Minnesota

7634

## SECRETARY OF STATE

### CERTIFICATE OF INCORPORATION

I, Joan Anderson Grove, Secretary of State of Minnesota, do certify that: Articles of Incorporation, duly signed and acknowledged under oath, have been filed on this date in the Office of the Secretary of State, for the incorporation of the following corporation, under and in accordance with the provisions of the chapter of Minnesota Statutes listed below.

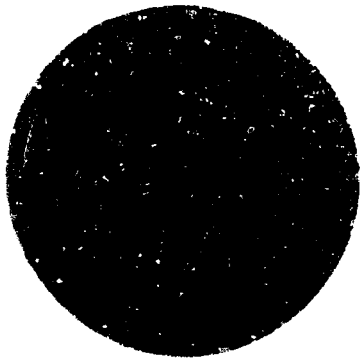
This corporation is now legally organized under the laws of Minnesota.

Corporate Name: MI Acquisition Corporation

Corporate Charter Number: 9P-201

Chapter Formed Under: 302A

This certificate has been issued on 03/25/1997.



*Joan Anderson Grove*  
Secretary of State.

EXHIBIT

tabbles

A

98-201

**ARTICLES OF INCORPORATION**  
**OF**  
**MI ACQUISITION CORPORATION**

The undersigned incorporator, being a natural person 18 years of age or older, in order to form a corporate entity under Minnesota Statutes, Chapter 302A, hereby adopts the following articles of incorporation: ✓

**ARTICLE 1**

**Name:** The name of this Corporation shall be: MI Acquisition Corporation. m ✓

**ARTICLE 2**

**Registered Office:** The location and address of the Corporation's registered office in the State of Minnesota shall be: 2400 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. ✓

**ARTICLE 3**

**Authorized Shares:** The total authorized capital stock of this Corporation shall consist of Two Million (2,000,000) shares, all of which shall be shares of common stock of the par value of one cent (\$.01) per share. ✓

3.1 The Board of Directors may, from time to time, establish by resolution, different classes or series of shares and may fix the rights and preferences of said shares in any class or series.

3.2 The Board of Directors shall have the authority to issue shares of a class or series, shares of which may then be outstanding, to holders of shares of another class or series to effectuate share dividends, splits or conversion of its outstanding shares.

**ARTICLE 4**

**Certain Shareholder Rights:** Shareholders shall have no preemptive rights to purchase, subscribe for or otherwise acquire any new or additional securities of the Corporation. No shareholder shall be entitled to any cumulative voting rights.

## ARTICLE 5

**Written Action by Board:** An action required or permitted to be taken by the Board of Directors of this Corporation may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the Board at which all directors are present, except as to those matters which require shareholder approval, in which case the written action must be signed by all members of the Board of Directors.

## ARTICLE 6


**Nonliability of Directors for Certain Actions:** To the full extent permitted by the Minnesota Business Corporation Act, Minnesota Statutes, Chapter 302A, as it exists on the date hereof or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

## ARTICLE 7

**Incorporator:** The name and address of the incorporator is:

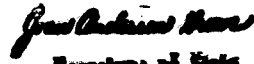
Brian D. Wenger  
2400 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402

IN WITNESS WHEREOF, I have hereunto set my hand this 24<sup>th</sup> day of March, 1997.

  
Brian D. Wenger, Incorporator

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED

MAR 25 1997

  
Secretary of State m

ap-201

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
MI ACQUISITION CORPORATION**

The following Amended and Restated Articles of Incorporation are adopted pursuant to Minnesota Statutes, Chapter 302A in accordance with Section 302A.133, by MI Acquisition Corporation, a corporation organized and existing under the laws of the State of Minnesota (the "Corporation"), to restate and supersede its existing Articles of Incorporation filed March 25, 1997.

**ARTICLE 1**

**Name:** The name of this Corporation shall be MI Acquisition Corporation.

**ARTICLE 2**

**Registered Office:** The address of the Corporation's registered office in the State of Minnesota shall be 2400 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402.

**ARTICLE 3**

**Authorized Shares:** The total authorized shares of all classes which the Corporation shall have authority to issue is 100,000,000, consisting of: 10,000,000 shares of preferred stock of the par value of one cent (\$0.01) per share (hereinafter the "preferred shares"); and 90,000,000 shares of common stock of the par value of one cent (\$0.01) per share (hereinafter the "common shares"). ✓

3.1 The Board of Directors of the Corporation (hereinafter referred to as the "Board of Directors" or "Board") may, from time to time, establish by resolution, different classes or series of preferred shares and may fix the rights and preferences of said shares in any class or series. Specifically, preferred shares of the Corporation may be issued from time to time in one or more series, each of which series shall have such designation or title and such number of shares as shall be fixed by resolution of the Board of Directors prior to the issuance thereof. Each such series of preferred shares shall have such voting powers, full or limited, or no voting powers, and such preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions providing for the issuance of such series of preferred shares as may be adopted from time to time by the Board of Directors prior to the issuance of any shares thereof pursuant to the authority hereby expressly vested in the Board.

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3.2 Except as provided or required by law, or as provided in the resolution or resolutions of the Board of Directors creating any series of preferred shares, the common shares shall have the exclusive right to vote, on a noncumulative basis, for the election and removal of directors and for all other purposes. Unless otherwise provided by resolution or resolutions of the Board of Directors, each holder of common shares shall be entitled to one vote for each share held.

3.3 The Board of Directors shall have the authority to issue shares of a class or series, shares of which may then be outstanding, to holders of shares of another class or series to effectuate share dividends, splits, or conversion of its outstanding shares.

3.4 The Board of Directors is authorized to accept and reject subscriptions for and to dispose of authorized shares of the Corporation, including the granting of stock options, warrants and other rights to purchase shares, without action by the shareholders and upon such terms and conditions as may be deemed advisable by the Board of Directors in the exercise of its discretion, except as otherwise limited by law.

3.5 The Board of Directors is authorized to issue, sell or otherwise dispose of bonds, debentures, certificates of indebtedness and other securities, including those convertible into shares of stock, without action by the shareholders and for such consideration and upon such terms and conditions as may be deemed advisable by the Board of Directors in the exercise of its discretion, except as otherwise limited by law.

#### ARTICLE 4

**Certain Shareholder Rights:** No shareholder shall be entitled to any preemptive right to purchase, subscribe for or otherwise acquire any new or additional securities of the Corporation, or any options or warrants to purchase, subscribe for or otherwise acquire any such new additional securities before the Corporation may offer them to other persons. No shareholder shall be entitled to any cumulative voting rights.

#### ARTICLE 5

**Written Action by Board:** An action required or permitted to be taken by the Board of Directors may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the Board at which all directors are present, except as to those matters which require shareholder approval, in which case the written action must be signed by all members of the Board of Directors.

#### ARTICLE 6

**Nonliability of Directors for Certain Actions:** To the fullest extent permitted by the Minnesota Business Corporation Act, Minnesota Statutes, Chapter 302A, as it exists on the date hereof or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article shall apply to or have any effect

on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

#### ARTICLE 7

**Initial Director:** The name and address of the person constituting the first member of the Company's Board of Directors is:

Brian D. Wenger  
2400 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

#### ARTICLE 8

**Indemnification of Directors and Officers:** The Corporation shall indemnify and may, in the discretion of the Board of Directors, insure current and former directors, officers and employees of the Corporation in the manner and to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the undersigned has hereunto set his hand as of this 25th day of March, 1997.




Brian D. Wenger  
Incorporator

Drafted By:

Briggs and Morgan, Professional Association  
Attention: Lori J. Ketola, Esq.  
2400 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED

MAY 13 1997

  
Secretary of State

97-201

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
MI ACQUISITION CORPORATION**

59689

MI Acquisition Corporation, a corporation organized and existing under the laws of the State of Minnesota, hereby certifies as follows:

1. The name of the corporation is MI Acquisition Corporation (the "Corporation"). The original Articles of Incorporation of the Corporation were filed with the Secretary of State of the State of Minnesota on March 25, 1997.

2. The Articles of Incorporation were amended and restated and filed with the Secretary of State of the State of Minnesota on May 13, 1997.

3. The second amendment and restatement of the Articles of Incorporation of the Corporation set forth below incorporate a change in the Corporation's registered office, which was authorized by resolution approved by the affirmative vote of a majority of the directors of the Corporation in accordance with the Minnesota Business Corporation Act, Minnesota Statutes, Chapter 302A.

4. The Articles of Incorporation of the Corporation are hereby amended and restated to read in their entirety as follows:

55.33

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
MI ACQUISITION CORPORATION  
ARTICLE 1**

**Name:** The name of this Corporation shall be MI Acquisition Corporation.

**ARTICLE 2**

**Registered Office:** The address of the Corporation's registered office in the State of Minnesota shall be Pillsbury Center, 220 South Sixth Street, Minneapolis, Minnesota 55402.

**ARTICLE 3**

**Authorized Shares:** The total authorized shares of all classes which the Corporation shall have authority to issue is 100,000,000, consisting of: 10,000,000 shares of preferred stock of the par value of one cent (\$0.01) per share (hereinafter the "preferred shares"); and 90,000,000 shares of common stock of the par value of one cent (\$0.01) per share (hereinafter the "common shares").

3.1 The Board of Directors of the Corporation (hereinafter referred to as the "Board of Directors" or "Board") may, from time to time, establish by resolution, different classes or series of preferred shares and may fix the rights and preferences of said shares in any class or series. Specifically, preferred shares of the Corporation may be issued from time to time in one or more series, each of which series shall have such designation or title and such number of shares as shall be fixed by resolution of the Board of Directors prior to the issuance thereof. Each such series of preferred shares shall have such voting powers, full or limited, or no voting powers, and such preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions providing for the issuance of such series of preferred shares as may be adopted from time to time by the Board of Directors prior to the issuance of any shares thereof pursuant to the authority hereby expressly vested in the Board.

3.2 Except as provided or required by law, or as provided in the resolution or resolutions of the Board of Directors creating any series of preferred shares, the common shares shall have the exclusive right to vote, on a noncumulative basis, for the election and removal of directors and for all other purposes. Unless otherwise provided by resolution or resolutions of the Board of Directors, each holder of common shares shall be entitled to one vote for each share held.

3.3 The Board of Directors shall have the authority to issue shares of a class or series, shares of which may then be outstanding, to holders of shares of another class or series to effectuate share dividends, splits, or conversion of its outstanding shares.

58.17  
3.3 The Board of Directors shall have the authority to issue shares of a class or series, shares of which may then be outstanding, to holders of shares of another class or series to effectuate share dividends, splits, or conversion of its outstanding shares.

3.4 The Board of Directors is authorized to accept and reject subscriptions for and to dispose of authorized shares of the Corporation, including the granting of stock options, warrants and other rights to purchase shares, without action by the shareholders and upon such terms and conditions as may be deemed advisable by the Board of Directors in the exercise of its discretion, except as otherwise limited by law.

3.5 The Board of Directors is authorized to issue, sell or otherwise dispose of bonds, debentures, certificates of indebtedness and other securities, including those convertible into shares of stock, without action by the shareholders and for such consideration and upon such terms and conditions as may be deemed advisable by the Board of Directors in the exercise of its discretion, except as otherwise limited by law.

#### ARTICLE 4

**Certain Shareholder Rights:** No shareholder shall be entitled to any preemptive right to purchase, subscribe for or otherwise acquire any new or additional securities of the Corporation, or any options or warrants to purchase, subscribe for or otherwise acquire any such new additional securities before the Corporation may offer them to other persons. No shareholder shall be entitled to any cumulative voting rights.

#### ARTICLE 5

**Written Action by Board:** An action required or permitted to be taken by the Board of Directors may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the Board at which all directors are present, except as to those matters which require shareholder approval, in which case the written action must be signed by all members of the Board of Directors.

#### ARTICLE 6

**Nonliability of Directors for Certain Actions:** To the fullest extent permitted by the Minnesota Business Corporation Act, Minnesota Statutes, Chapter 302A, as it exists on the date hereof or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**ARTICLE 7**

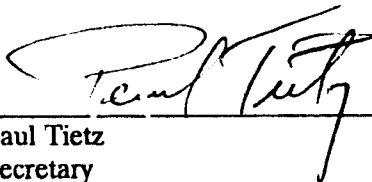
**Initial Director:** The name and address of the person constituting the first member of the Company's Board of Directors is:

Brian D. Wenger  
2400 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

**ARTICLE 8**

**Indemnification of Directors and Officers:** The Corporation shall indemnify and may, in the discretion of the Board of Directors, insure current and former directors, officers and employees of the Corporation in the manner and to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the undersigned has hereunto set his hand as of this 20th day of November, 1997.

  
\_\_\_\_\_  
Paul Tietz  
Secretary

Drafted By:

Briggs and Morgan, Professional Association  
Attention: Lori J. Ketola, Esq.  
2400 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED

NOV 21 1997



Secretary of State



# MINNESOTA SECRETARY OF STATE

## NOTICE OF CHANGE OF REGISTERED OFFICE/ REGISTERED AGENT

9P-201

Please read the instructions on the back before completing this form.

1. Entity Name:

MI ACQUISITION CORPORATION

2. Registered Office Address (No. & Street): List a complete street address or rural route and rural route box number. A post office box is not acceptable.

150 SOUTH FIFTH STREET,

Street

MINNEAPOLIS,

City

MN

State

55402

Zip Code

3. Registered Agent (Registered agents are required for foreign entities but optional for Minnesota entities):

NONE

If you do not wish to designate an agent, you must list "NONE" in this box. **DO NOT LIST THE ENTITY NAME.**

In compliance with *Minnesota Statutes, Section 302A.123, 303.10, 308A.025, 317A.123 or 322B.135* I certify that the above listed company has resolved to change the entity's registered office and/or agent as listed above.

I certify that I am authorized to execute this notice and I further certify that I understand that by signing this notice I am subject to the penalties of perjury as set forth in *Minnesota Statutes Section 609.48* as if I had signed this notice under oath.

  
Signature of Authorized Person

Name and Telephone Number of a Contact Person: E. J. HENTGES ( 612 ) 376-1500  
please print legibly

Filing Fee: Minnesota Corporations, Cooperatives and Limited Liability Companies: \$35.00.

Non-Minnesota Corporations: \$50.00.

Make checks payable to **Secretary of State**

Return to: Minnesota Secretary of State  
180 State Office Bldg.  
100 Constitution Ave.  
St. Paul, MN 55155-1299  
(651)296-2803

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED

FEB 23 2000



**SECRETARY OF STATE***Certificate of Merger*

*I, Mary Kiffmeyer, Secretary of State of Minnesota, certify that: the documents required to effectuate a merger between the entities listed below and designating the surviving entity have been filed in this office on the date noted on this certificate; and the qualification of any non-surviving entity to do business in Minnesota is terminated on the effective date of this merger.*

*Merger Filed Pursuant to Minnesota Statutes, Chapter: 302A*

*State of Formation and Names of Merging Entities:*

**MN: MILLER & SCHROEDER, INC.**

**MN: MI ACQUISITION CORPORATION**

*State of Formation and Name of Surviving Entity:*

**MN: MI ACQUISITION CORPORATION**

*Effective Date of Merger: May 8, 2000*

*Name of Surviving Entity After Effective Date of Merger:*

**MILLER & SCHROEDER, INC.**

*This certificate has been issued on: May 8, 2000.*



*Mary Kiffmeyer*  
Secretary of State.

97-201

**ARTICLES OF MERGER  
OF  
MILLER & SCHROEDER, INC.  
INTO  
MI ACQUISITION CORPORATION**

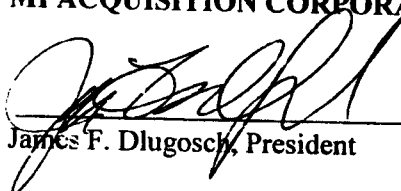
The undersigned officer of MI Acquisition Corporation ("MI"), a Minnesota corporation, files these Articles of Merger pursuant to Section 302A.621 of Minnesota Statutes and hereby certifies as follows:

1. The plan of merger attached as Exhibit A provides for the merger of Miller & Schroeder, Inc. ("MSI"), a Minnesota corporation, into MI.
2. MSI is a wholly owned subsidiary of MI and has 990,625 shares of common stock issued and outstanding, all of which are owned by MI.
3. The plan of merger has been approved by MI pursuant to Section 302A.621 (Merger of Subsidiary) of Minnesota Statutes.
4. The merger will become effective upon the filing of these Articles of Merger. ✓

IN WITNESS WHEREOF, the undersigned, being duly authorized on behalf of MI Acquisition Corporation, has executed this document.

Dated: May 8, 2000

**MI ACQUISITION CORPORATION**

  
\_\_\_\_\_  
James F. Dlugosch, President

**EXHIBIT A**  
**Plan of Merger**

1199073.2

## PLAN OF MERGER

The undersigned officer of MI Acquisition Corporation ("MI"), a Minnesota corporation, hereby certifies the following Plan of Merger (the "Plan") between Miller & Schroeder, Inc. ("MSI"), a Minnesota corporation, and MI (said corporations being hereinafter sometimes collectively referred to as the "Constituent Corporations") was approved pursuant to Section 302A.621 of Minnesota Statutes:

**WHEREAS**, the authorized capital stock of MSI consists of 3,000,000 shares of common stock, of which 990,625 shares are issued and outstanding, and 100,000 shares of Series A Preferred stock, of which no shares are issued and outstanding ("MSI Stock");

**WHEREAS**, MI is the owner of all of the issued and outstanding MSI Stock; and

**WHEREAS**, the merger of MSI with and into MI was approved pursuant to Section 302A.621 of the Minnesota Business Corporation Act (the "Act") by resolution adopted by the Board of Directors of MI on behalf of MI effective May 5, 2000;

**NOW, THEREFORE**, the Plan of Merger is as follows:

### ARTICLE I

In accordance with the provisions of the laws of the State of Minnesota, MSI will be merged with and into MI (the "Merger"). MI will be, and is herein sometimes referred to as, the "Surviving Corporation."

### ARTICLE II

The Merger will be effective in the State of Minnesota at the time the Articles of Merger are filed with the Secretary of State of the State of Minnesota. The date on which the Merger becomes effective is hereinafter referred to as the "Effective Date." The time on such date at which the Merger becomes effective is hereinafter called the "Effective Time."

### ARTICLE III

The Articles of Incorporation and Bylaws of MI will be the Articles of Incorporation and Bylaws of the Surviving Corporation, until further amended in accordance with applicable law, and the officers and directors of MI will serve as the officers and directors of the Surviving Corporation until their successors are duly elected and qualified, or until their earlier death, resignation or removal. Upon the effective time of the merger, the Surviving Corporation's name shall change to: Miller & Schroeder, Inc.



#### ARTICLE IV

In view of the fact that MSI is a wholly owned subsidiary of MI, at the Effective Time each share of MSI Stock issued and outstanding immediately prior to the Effective Time of the Merger will be canceled and will cease to be outstanding.

#### ARTICLE V

Except as herein specifically set forth, the identity, existence, purposes, powers, objects, franchises, privileges, rights and immunities of MI will continue unaffected and unimpaired by the Merger, and the corporate franchises, existence and rights of MSI will be merged with and into MI and MI will, as the Surviving Corporation, be fully vested therewith. At the Effective Time, the separate existence of MSI will cease and, in accordance with the terms of this Plan, the Surviving Corporation will possess all the rights, privileges, powers and franchises of a public as well as a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all the rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed and all debts due to either of the Constituent Corporations on whatever account, including stock subscriptions, and all other things in action and all and every other interest of or belonging to or due to each of such corporations will be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed; and all property, rights, privileges, powers and franchises, and all and every other interest will be thereafter as effectively the property of the Surviving Corporation as they were of the respective Constituent Corporations, and the title to any real estate or interest therein, vested by deed or otherwise in either of such corporations, will not revert or be in any way impaired by reason of the Merger. The Surviving Corporation will thenceforth be responsible and liable for all the liabilities and obligations of the Constituent Corporations, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations will be impaired by the Merger, and all debts, liabilities and duties of each of said Constituent Corporations will thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

If, upon or after the effectiveness of the Merger, the Surviving Corporation determines that any returns or reports, or any filings of any kind, are required to be made by MSI to the Internal Revenue Service or to any other state or federal administrative or regulatory agency, or if any assignments, deeds or assurances are necessary or desirable to vest in the Surviving Corporation any property of MSI, the Chairman of the Board of the Surviving Corporation, or such other officers thereof as may be designated by the Board of Directors thereof, will

be empowered to make and execute on behalf of MSI all necessary returns, reports or filings of any kind, and all proper assignments, deeds or assurances, and to do all other things necessary and proper to effectuate the Merger and to vest title to all of the property of MSI in the Surviving Corporation.

## ARTICLE VI

This Plan and the Merger may be terminated and abandoned upon resolution of the Board of Directors of MI at any time prior to the Effective Date. In the event of the termination and abandonment of this Plan and the Merger pursuant to the foregoing provisions of this Article VI, this Plan will be void and have no effect, and no liability will be incurred hereunder on the part of either MI or MSI or the shareholders, directors, or officers thereof.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized on behalf of MI Acquisition Corporation, has executed this document.

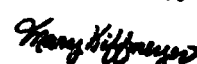
Dated: May 8, 2000

**MI ACQUISITION CORPORATION**

  
James F. Dlugosch, President

STATE OF MINNESOTA  
FILED

MAY 08 2000

  
Secretary of State



MINNESOTA SECRETARY OF STATE

9P-201

AMENDMENT OF ARTICLES OF INCORPORATION

READ INSTRUCTIONS LISTED BELOW, BEFORE COMPLETING THIS FORM.

1. Type or print in black ink.
2. There is a \$35.00 fee payable to the Secretary of State for filing this "Amendment of Articles of Incorporation".
3. Return Completed Amendment Form and Fee to the address listed on the bottom of the form.

CORPORATE NAME: (List the name of the company prior to any desired name change)

Miller & Schroeder, Inc.

This amendment is effective on the day it is filed with the Secretary of State, unless you indicate another date, no later than 30 days after filing with the Secretary of State.

effective 10-16-01

The following amendment(s) to articles regulating the above corporation were adopted: (Insert full text of newly amended article(s) indicating which article(s) is (are) being amended or added.) If the full text of the amendment will not fit in the space provided, attach additional numbered pages. (Total number of pages including this form 1.)

ARTICLE 1

Name: The name of this corporation shall be: SRC Holding Corporation *NR*

This amendment has been approved pursuant to Minnesota Statutes chapter 302A or 317A. I certify that I am authorized to execute this amendment and I further certify that I understand that by signing this amendment, I am subject to the penalties of perjury as set forth in section 609.48 as if I had signed this amendment under oath.

*David G. Reinhart*  
(Signature of Authorized Person)

Name and telephone number of contact person: David G. Reinhart (612) 376.1353  
Please print legibly

All of the information on this form is public and required in order to process this filing. Failure to provide the requested information will prevent the Office from approving or further processing this filing.

If you have any questions please contact the Secretary of State's office at (651)296-2803.

RETURN TO: Secretary of State  
180 State Office Bldg., 100 Constitution Ave.  
St. Paul, MN 55155-1299, (651)296-2803

08921340 Rev 10/98

031976

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED

OCT 26 2001

*Christy Hoffmann*  
Secretary of State

# AUDIT WORKING PAPERS

Engagement Number: 166-07728-10 **07728**

Parent Legal Name: 11: ACQUISITION

Affiliate Legal Name: Miller & Schroeder, Inc. File with Parent  
File as separate Affiliate\*  
(See reverse for instructions)

Client Year End: 10/31/97

Special Date: (If work is other than year end) 7/1/97

Nature of Work:  
Due Diligence (2X2) Detail

Does this file contain materials related to a  
SINGLE AUDIT under OMB A-128 or A-133? yes no

## General Audit Areas

(circle those which apply)

- |  |   |   |
|--|---|---|
| A. Trial Balances, Adjusting and<br>Reclassifying Entries,<br>Analytical Review Workpapers | G. Fixed Assets   | N. Payroll and Related Costs            |
| B. Cash Balances   | H. Leases   | R. Report Tie-Out                       |
| C. Investments   | I. Indebtedness   | <u>X</u> Other <u>SUBSIDIARIES TABS</u> |
| D. Nontrade Receivable   | J. Taxes  | Other _____                             |
| E. Inventories   | K. Ownership Equity   | Other _____                             |
| F. Prepaid Expenses, Deferred<br>Charges, Intangible and Other<br>Assets                   | L. Revenue, Receivables, and Receipts<br>Cycle                                | Other _____                             |
|  | M. Purchasing and Disbursement Cycle<br>(i.e., accounts payable and accruals) | Other _____                             |

## Specialized Audit Areas

(check those which apply or identify letter)

Banking/Thriffs	Broker/Dealer	Mutual Funds	Insurance
<input type="checkbox"/> Loans	<input type="checkbox"/> Dealer balances	<input type="checkbox"/> Investments-valuation	<input type="checkbox"/> Mortgage loans
<input type="checkbox"/> Allowance for Losses	<input type="checkbox"/> Customer balances	<input type="checkbox"/> Investments-existence	<input type="checkbox"/> Real estate
<input type="checkbox"/> Credit reviews	<input type="checkbox"/> Repurchase	<input type="checkbox"/> Investment transactions,	<input type="checkbox"/> Policy loans (life)
<input type="checkbox"/> REO/REJ	<input type="checkbox"/> agreement, reverse	<input type="checkbox"/> gains and losses	<input type="checkbox"/> DAC (GAAP only)
<input type="checkbox"/> Mortgage banking	<input type="checkbox"/> repurchase agreements	<input type="checkbox"/> Interest income	<input type="checkbox"/> Due, deferred, and
<input type="checkbox"/> Deposits	<input type="checkbox"/> Underwriting	<input type="checkbox"/> Dividend income	<input type="checkbox"/> advanced
<input type="checkbox"/> Advanced and other	<input type="checkbox"/> Credit review	<input type="checkbox"/> Open trades	<input type="checkbox"/> Premiums (life and A&H)
<input type="checkbox"/> borrowed money	<input type="checkbox"/> Net capital	<input type="checkbox"/> Expenses	<input type="checkbox"/> Premium receivable (P&C)
<input type="checkbox"/> Parent company/ subsidiary	<input type="checkbox"/> Customer reserve	<input type="checkbox"/> Shareholder	<input type="checkbox"/> Reserves
<input type="checkbox"/> Bank Secrecy Act	<input type="checkbox"/> Regulation T	<input type="checkbox"/> confirmations	<input type="checkbox"/> Unearned premiums
<input type="checkbox"/> Loan servicing (FHLBC, GNMA, USAP, etc.)	<input type="checkbox"/> Possession and control	<input type="checkbox"/> Capital stock	<input type="checkbox"/> Reinsurance, including
<input type="checkbox"/> FHLB collateral	<input type="checkbox"/> Quarterly security counts	<input type="checkbox"/> Dividend distributions	<input type="checkbox"/> contingent commissions/ arrangements
<input type="checkbox"/> verification	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Futures	<input type="checkbox"/> Policyholder dividends
<input type="checkbox"/> Other: _____		<input type="checkbox"/> Options	<input type="checkbox"/> Surplus
		<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

07728 ----- WP 97-02

10/31/1997

MILLER AND SCHROEDER  
PARENT

12887

WORKPAPERS

DUE DILIGENCE 2 OF 2



BOX

390410345

AUDIT DEPT

KPMG Peat Marwick LLP

Revised 8.94

EXHIBIT

tabbles

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CONFIDENTIAL

KPMG

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MILLER & SCHROEDER INC  
STATEMENT OF FINANCIAL CONDITION  
JULY 31, 1997

	MAY 97	JUN 97	JUL 97
<b>ASSETS</b>			
CASH	(4,247)	(857)	18,008 ✓
CASH-RESTRICTED ESCROW	0	0	0
<b>RECEIVABLES</b>			
INTEREST	61,053	61,053	61,053 ✓
OFFICER/STOCKHOLDERS	1,141,852	1,147,728	0
INCOME TAXES	209,237	97,030	71,029 ✓
OTHER	10,963	0	3,948 ✓
INTERCO REC FROM MI ACQUIS	0	0	1,231,922 ✓
NOTES RECEIVABLE	719,366	719,366	719,366 ✓
RENTAL PROPERTY	3,783,615	3,766,912	0
<b>OTHER ASSETS-</b>			
CASH VALUE LIFE, NET	242,734	242,834	176,686 ✓
PREPAID EXPENSES	56,017	55,160	30,307 ✓
DEPOSIT - RENTAL PROPERTY	23,103	16,542	14,244 ✓
DEFERRED FINANCING COSTS	19,252	59,527	0
ESCROW DEPOSITS - UMC	637,707	638,611	0
INVESTMENT IN SUBS	9,253,734	9,253,734	9,253,734 ✓
<b>TOTAL ASSETS</b>	<b>16,154,386</b>	<b>16,057,640</b>	<b>11,580,297 ✓</b>
<b>LIABILITIES</b>			
NOTE PAYABLE MSIC (NNP)	0	0	0
OPERATING ACCTS PAYABLE	0	7,897	3,967 ✓
DUE TO RELATED CO	3,528,106	3,399,304	3,541,478 ✓
DEFERRED INCOME	17,981	12,892	0
ACCRUED INTEREST	45,274	40,287	15,518 ✓
ACCRUED INCOME TAXES	0	0	0
ACCRUED EXPENSES	17,344	26,429	24,590 ✓
TERM DEBT-USF&G	4,606,892	0	0
TERM DEBT-MID AMERICA	0	4,600,000	0
TERM DEBT-MSIC	883,331	866,664	849,997 ✓
<b>TOTAL LIABILITIES</b>	<b>9,098,928</b>	<b>8,953,473</b>	<b>4,435,550 ✓</b>
<b>SHAREHOLDERS EQUITY</b>			
COMMON STOCK	99,063	99,063	99,063 ✓
PREFERRED STOCK	0	0	0
PAID-IN CAPITAL	6,000,000	6,000,000	6,000,000 ✓
RETAINED EARNINGS-PRIOR	1,003,419	1,003,419	1,003,419 ✓
RETAINED EARNINGS-CURRENT	(47,024)	1,685	42,265 ✓
<b>TOTAL SHAREHOLDERS EQUITY</b>	<b>7,055,458</b>	<b>7,104,167</b>	<b>7,144,747 ✓</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>16,154,386</b>	<b>16,057,640</b>	<b>11,580,297 ✓</b>

represents cash due from  
Wickner for CSV of  
life insurance policies.  
see adjustments @ recon  
attached.

repaid @ date of  
merger.

To be reviewed by tax  
dept.

amt due from parent for  
repayment of employee notes  
above.

0 - sold @ date of merger

Agreed to recon attached  
see attached Trial balance  
(P/B/W)

see recon  
attached

eliminates in consolidation

eliminates in consolidation

see attached trial balance

Property tax reduction  
@ the "crossings mall"  
sh/b rebated tenants  
no further exposure.

will be paid to  
tenants after closing.  
Agreed to supporting  
schedules P/F/W.

See explanations  
on attached  
trial balance

Note  
MSI is the parent holding company.  
✓ = Agreed to have rec w/o/e.

**MI ACQUISITION CORPORATION  
AND SUBSIDIARIES**

**Consolidated Financial Statements  
and Consolidating Schedules**

**October 31, 1998 and 1997**

**TABLE OF CONTENTS**

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	Page(s)
Independent Auditors' Report.....	1
Financial Statements:	
Consolidated Balance Sheets.....	2-3
Consolidated Statements of Operations.....	4
Consolidated Statements of Shareholders' Equity .....	5
Consolidated Statements of Cash Flows .....	6
Notes to Consolidated Financial Statements .....	7-15
Schedules:	
Schedule I—Consolidating Balance Sheet—October 31, 1998 .....	16
Schedule I—Consolidating Balance Sheet—October 31, 1997 .....	17
Schedule II—Consolidating Statement of Operations For the year ended October 31, 1998 .....	18
Schedule II—Consolidating Statement of Operations For the period from August 1, 1997 to October 31, 1997.....	19

## Independent Auditors' Report

The Board of Directors  
MI Acquisition Corporation:

We have audited the accompanying consolidated balance sheets of MI Acquisition Corporation and subsidiaries as of October 31, 1998 and 1997, and the related consolidated statements of operations, shareholders' equity and cash flows for the year ended October 31, 1998 and the period from August 1, 1997 (commencement of operations) to October 31, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of MI Acquisition Corporation and subsidiaries as of October 31, 1998 and 1997, and the results of their operations and their cash flows for the year ended October 31, 1998 and the period from August 1, 1997 to October 31, 1997, in conformity with generally accepted accounting principles.

Our audits were made for the purpose of forming an opinion on the basic consolidated financial statements taken as a whole. Schedules I and II are presented for purposes of additional analysis of the consolidated financial statements rather than to present the financial position and the results of operations of the individual companies. These schedules are not a required part of the basic consolidated financial statements. This information has been subjected to the auditing procedures applied in our audits of the basic consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic consolidated financial statements taken as a whole.

*KPMG Peat Marwick LLP*

December 30, 1998



# MTACQUISITION CORPORATION AND SUBSIDIARIES

## Consolidated Balance Sheet

October 31, 1998 and 1997

Liabilities and Shareholders' Equity	1998	1997
Demand notes payable	\$ 10,463,755	42,543,000
Accounts payable:		
Customers	1,134,376	722,939
Brokers, dealers and clearing organizations	883,543	87,659
Operating	2,634,092	2,098,350
Total accounts payable	4,652,011	2,908,948
Accrued liabilities	4,751,366	4,445,160
Income taxes	140,548	—
Term debt	8,006,229	9,719,605
Total liabilities	28,013,909	59,616,713
Commitments and contingencies (note 8)		
Shareholders' equity:		
Common stock, \$.01 par value, 90,000,000 shares authorized; 938,950 and 875,850 issued and outstanding in 1998 and 1997, respectively; preferred stock, \$.01 par value, 10,000,000 shares authorized; none issued and outstanding in 1998 and 1997	9,390	8,759
Additional paid-in capital	8,537,053	7,906,684
Retained earnings	1,340,658	244,308
Less: Note receivable from shareholder (note 10)	(500,000)	—
Total shareholders' equity	9,387,101	8,159,751
Total liabilities and shareholders' equity	\$ 37,401,010	67,776,464

Memorandum No. \_\_\_\_\_

Name of Offeree \_\_\_\_\_

## **MI ACQUISITION CORPORATION**

### **Up to 300,000 Shares of Common Stock**

This Memorandum relates to an offering by MI Acquisition Corporation (the "Company") of up to 300,000 shares of its Common Stock (\$.01 par value per share) (the "Shares") at an offering price of \$10.00 per Share. No commissions, discounts or other remuneration will be paid to any person in connection with the sale of the Shares. The net proceeds from the sale of the Shares will be used by the Company to increase working capital and to retire certain indebtedness incurred in connection with the Company's acquisition of all of the outstanding common stock of Miller & Schroeder, Inc. ("M&S") in July 1997 (the "Acquisition"). The Company reserves the right to sell up to 132,500 additional shares of Common Stock at the offering price.

All subscriptions will be irrevocable and nonrefundable. The Company reserves the right to reject any subscription in whole or in part and to terminate the offering at any time upon written notice. In the event the Company terminates the offering, all funds received from subscribers will be promptly returned, without interest. This offering is made to persons who are "accredited investors" within the meaning of Regulation D of the Securities Act of 1933, as amended. The Shares will be restricted as to transfer. See "Investor Qualifications - Restrictions on Transferability of the Shares." As to potential investors who are employees of the Company or any of its affiliates or subsidiaries, the distribution of this Memorandum or the subscription of Shares pursuant thereto is not in any way a guaranty of continued employment with the Company or any of its affiliates or subsidiaries. See "Plan of Distribution."

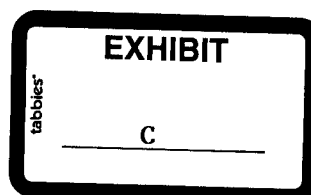
**The Shares offered by this Memorandum are speculative, involve risk and immediate dilution. See "Investment Considerations" beginning on Page 8 of this Memorandum.**

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**THESE SECURITIES ARE OFFERED PURSUANT TO CLAIMED EXEMPTIONS UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND CERTAIN STATE SECURITIES LAWS. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES HAVE ALSO NOT BEEN APPROVED OR DISAPPROVED BY ANY STATE SECURITIES COMMISSION NOR HAS ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS ILLEGAL.**

**MI Acquisition Corporation  
Pillsbury Center  
220 South Sixth Street, Suite 300  
Minneapolis, Minnesota 55402**

The date of this Amended Confidential Private Placement Memorandum is September 12, 1997.



SUBSCRIPTIONS MUST BE ACCOMPANIED BY CERTAIN REPRESENTATIONS, INCLUDING A REPRESENTATION AS TO WHETHER THE INVESTOR IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF REGULATION D OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND WHETHER THE INVESTOR IS ACQUIRING THE SHARES FOR INVESTMENT ONLY AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE. NO ASSURANCE CAN BE GIVEN THAT ANY PUBLIC OR OTHER MARKET WILL DEVELOP FOR THE SHARES. THE SHARES ARE NOT TRANSFERABLE WITHOUT THE SATISFACTION OF CERTAIN CONDITIONS. PROSPECTIVE INVESTORS SHOULD PROCEED ONLY ON THE ASSUMPTION THAT THEY WILL BEAR THE ECONOMIC RISK OF AN INVESTMENT IN THE SHARES FOR AN INDEFINITE PERIOD OF TIME.

THE SHARES ARE BEING OFFERED ONLY BY THE COMPANY PURSUANT TO THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM. NO DEALER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED IN CONNECTION WITH THIS OFFERING TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION NOT CONTAINED IN THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY.

THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM HAS BEEN PREPARED BY THE COMPANY SOLELY FOR THE BENEFIT OF PROSPECTIVE INVESTORS AND CONSTITUTES AN OFFER TO A PROSPECTIVE INVESTOR ONLY IF HIS, HER OR ITS NAME APPEARS ON THE FIRST PAGE. THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM MAY NOT BE GIVEN TO ANY PERSON OTHER THAN SUCH PROSPECTIVE INVESTOR AND THOSE PERSONS RETAINED TO ADVISE THE INVESTOR.

THE OFFEREE, BY ACCEPTING DELIVERY OF THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM, AGREES TO RETURN THIS MEMORANDUM AND ALL ENCLOSED DOCUMENTS TO THE COMPANY IF THE OFFEREE DOES NOT UNDERTAKE TO PURCHASE ANY OF THE SHARES OFFERED HEREBY. THIS MEMORANDUM IS FURNISHED FOR THE SOLE USE OF THE PERSON OR ENTITY NAMED ON THE COVER PAGE, AND FOR THE SOLE PURPOSE OF PROVIDING INFORMATION REGARDING THE SHARES PROPOSED TO BE SOLD BY THE COMPANY. ALL INFORMATION CONCERNING THE COMPANY AND ITS PROPOSED ACQUISITION IS DEEMED CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE COMPANY.

---

THE COMPANY RETAINS THE RIGHT TO ACCEPT OR REJECT SUBSCRIPTIONS IN WHOLE OR IN PART.

---

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY ANY SECURITIES OTHER THAN THE SHARES TO WHICH IT RELATES, OR AN OFFER TO ANYONE IN ANY JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED OR IN WHICH THE PERSON MAKING SUCH OFFER OR SOLICITATION IS NOT QUALIFIED TO DO SO, OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER OR SOLICITATION. UNLESS OTHERWISE NOTED, ALL INFORMATION CONTAINED HEREIN IS AS OF THE DATE OF THIS MEMORANDUM, AND NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALES MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY SINCE SUCH DATE.

## TABLE OF CONTENTS

	<u>Page</u>
Foreword .....	2
Executive Summary .....	3
Acquisition Transaction Summary .....	3
The Opportunity .....	4
Summary Consolidated Financial Data of Miller & Schroeder, Inc. and Subsidiaries .....	6
The Offering .....	7
Summary Financial Data of MI Acquisition Corporation .....	7
Investment Considerations .....	8
Additional Background Information on Miller & Schroeder, Inc. ....	12
Dilution .....	14
Use of Proceeds .....	15
Dividend Policy .....	15
Capitalization .....	15
The Stock Purchase Agreement .....	16
Management .....	17
Principal Shareholders .....	22
Shares Eligible for Future Sale .....	23
Description of Securities .....	24
Plan of Distribution .....	27
Investor Qualifications .....	28
Legal Matters .....	29
 MI Acquisition Corporation Balance Sheet .....	 F-1
Index to the Financial Statements of Miller & Schroeder, Inc. ....	F-2
 Appendix A      Corporate Brochure of Miller & Schroeder, Inc. ....	 A-1
Appendix B      Corporate Documents and Exhibits Available for Inspection and Review by Investors .....	B-1
Appendix C      Subscription Agreement and Letter of Investment Intent .....	C-1

## **FOREWORD**

MI Acquisition Corporation (the "Company") has prepared this Amended Confidential Private Placement Memorandum (the "Memorandum") and has provided all information contained herein, including financial data.

The Company was incorporated on March 25, 1997, pursuant to the Minnesota Business Corporation Act for the purpose of acquiring the outstanding stock of Miller & Schroeder, Inc. from the then existing holders thereof. The transaction effecting this acquisition closed on July 31, 1997. The Company has no predecessor and no operating history other than the operating history following the closing of the acquisition. The Company's executive offices are located at Pillsbury Center, 220 South Sixth Street, Suite 300, Minneapolis, Minnesota 55402. The Company's telephone number is (612) 376-1500.

Purchasers and their representatives, if any, are urged to read this Confidential Private Placement Memorandum carefully. Offerees may ask questions, receive additional information and inspect copies of all documents, contracts, financial statements, and other records to which reference is herein made by contacting the Chief Executive Officer of the Company, Mr. James F. Dlugosch, at (612) 376-1364 during normal business hours. See Appendix B. Because of the confidential nature of some of these documents, copies may not be

made and purchasers and their representatives, if any, will be required to sign a nondisclosure agreement prior to inspection of any confidential documents. Purchasers and their representatives, if any, will be asked to acknowledge in the Subscription Agreement and Letter of Investment Intent that they were given the opportunity to obtain such additional information and that they either did so or elected to waive such opportunity. See Appendix C.

## EXECUTIVE SUMMARY

An investment group, including James F. Dlugosch, the current President and Chief Executive Officer of Miller & Schroeder, Inc. ("M&S"), Kenneth Dawkins, Chairman and Chief Investment Officer of CH Brown Company Inc., James L. Morrell, former managing director of Corporate Finance for Dain Bosworth Incorporated, and Paul H. Tietz, a member of the law firm of Briggs and Morgan, Professional Association, organized the Company in March 1997, for the purpose of acquiring the outstanding common stock of M&S (the "Acquisition") from the then existing owners thereof, Roger Wikner, James Iverson and Steven Erickson (the "Sellers"). On June 20, 1997, the Company entered into a stock purchase agreement with the Sellers to acquire the outstanding M&S shares for \$15.0 million. The Acquisition closed on July 31, 1997. The Acquisition was financed by the sale of \$6.7 million of the Company's Common Stock, acquisition debt financing totaling approximately \$6.5 million, and utilization of approximately \$2.1 million of M&S assets. In addition to the Shares, the Company may elect to sell up to an additional \$1.3 million of Common Stock, the proceeds of which will be used to reduce Acquisition indebtedness.

### ACQUISITION TRANSACTION SUMMARY

<b>Miller &amp; Schroeder, Inc. . . .</b>	M&S is a financial services firm which derives a majority of its revenue from the underwriting, sale and trading of securities by its principal operating subsidiary, Miller & Schroeder Financial, Inc. Subsidiaries of M&S also provide other financial services and products, including commercial lending and mortgage banking.
<b>The Structure . . . . .</b>	MI Acquisition Corporation purchased all of the outstanding common stock of M&S from the existing holders thereof. The Company operates as a holding company for M&S and its subsidiaries.
<b>The Acquisition Price . . . . .</b>	The Acquisition price for M&S was \$15.0 million, subject to a purchase price adjustment based on the difference between the January 31, 1997 book value and the July 31, 1997 book value of M&S. See "The Stock Purchase Agreement."

The Acquisition was financed as follows:

<u>Sources:</u>	<u>Dollars in Millions</u>
Equity . . . . .	\$ 6.7
Term Debt . . . . .	6.5
M&S Assets . . . . .	<u>2.1</u>
	<u>\$ 15.3</u>
<u>Uses:</u>	
Purchase Price . . . . .	\$ 15.0
Acquisition Costs . . . . .	<u>.3</u>
	<u>\$ 15.3</u>

The foregoing is a brief summary of the transaction by which the Company acquired M&S, which is conditioned in its entirety upon reference to the stock purchase agreement dated June 20, 1997 and effective as of June 1, 1997 among the Sellers and the Company (the "SPA"). See "The Stock Purchase Agreement."

## THE OPPORTUNITY

During the 1960s and 1970s, substantial growth occurred in the securities industry, particularly in the issuance of tax-exempt bonds for private activities. In response to the rapid development of the municipal bond market, numerous broker-dealer firms were created to underwrite and distribute municipal securities. These firms competed directly with large New York and regional based firms, but were able to fill niches and prosper by developing loyal clients, minimizing costs, maintaining flexibility, and offering additional products and services demanded by the public finance market.

Today, many of these firms are facing new challenges. Some have struggled as their owners and founders move toward retiring or finding new endeavors. Others face the difficult task of adapting to the changes affecting the securities industry in general and the municipal markets in particular. Even firms which have adapted are motivated to sell in order provide liquidity to their owners. Many privately-held broker-dealers are merging with other firms, disbanding, or selling out to new investors.

The Company believes that these firms present attractive investment opportunities. New ownership can invigorate a broker-dealer by bringing enthusiasm, ideas and a style of management that is in tune with today's business environment. Profits can be increased by implementing cost reductions, imposing tighter management controls, including budgeting and planning, and expanding the core competencies of the firm by adding services and moving into new markets.

One example of this type of firm is M&S, which has moved aggressively into new businesses and markets as its previous core business of municipal finance has become less profitable. Further growth of those businesses and continued moves to greater efficiency in the municipal business present an opportunity for increased earnings and growth of the firm's capital. For a number of reasons, including the intimate knowledge James F. Dlugosch has obtained as a senior executive with M&S, the opportunities at M&S are significant and offer a unique investment opportunity. It is the intent of the purchaser to grow revenue and increase profitability by more fully exploiting the corporate finance and lending businesses which have been developed by M&S, by expanding into money management, by developing the asset-backed securities business, and by introducing efficiency and business management practices into the firm.

The Company believes that M&S presents an attractive investment opportunity for a variety of reasons, including the following:

- M&S has established a network of community bank relationships through its commercial lending activities. The Company believes that this network can be readily expanded both geographically and in terms of products and services, which currently consist of commercial lending and loan participations.
- M&S has identified a corporate finance niche in the sale of subordinated debt in the public and private markets for companies needing capital for expansion and product development. This business can also be expanded, both within current market areas and in other geographic markets.
- As one of the few non-bank Small Business Administration ("SBA")-approved lenders in the nation, M&S has secured a valuable license which has not yet been fully developed. The Company believes that M&S will be able to grow this business substantially.

- The Company has entered into negotiations to acquire CH Brown Company Inc. ("Brown"), a money management firm owned in part by one of the Company's shareholders, officers and directors. No assurance can be given that the Company and Brown will be able to reach mutually satisfactory terms for the acquisition of Brown by the Company. See "Management – Certain Relationships and Transactions."
- The Company will implement a budget and planning process which it believes will improve the efficiency and profitability of M&S.
- Through alliances with other regionally-based securities firms, the Company expects to be able to expand into new markets with its products and services and to increase its ability to distribute and underwrite new offerings.
- The Company will be adding technological resources which can be expected, based on the experience of the industry, to greatly increase productivity, reducing clerical staff and increasing the ability of the sales force to focus its efforts.

#### **Highlights of Operating Plan Subsequent to Acquisition**

The Company is pursuing a plan to maximize the profitability of M&S and pursue development of strategic alliances with other broker-dealers and financial service providers.

The Company intends to allocate M&S's resources to expand the more profitable components of the firm's business. M&S's activity in commercial lending, corporate finance, money management, the sale of equities and trading are believed to offer growth opportunities, while municipal finance is unlikely to experience an increase. The Company believes that expansion will most likely occur in connection with the growth of commercial and small business lending and sales of loan participations to community banks.

Along with its goal of increasing the profitability of M&S, the Company will also be evaluating strategic alliances with other broker-dealers and providers of financial services. The Company also intends to focus on enlarging M&S's presence in the equity markets, expanding its retail sales capability and achieving management, operations and information systems efficiencies through acquisitions.

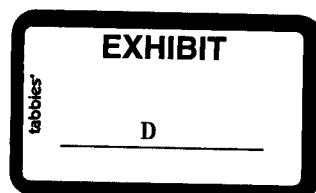
Although the foregoing represents highlights of the Company's current business plan for M&S, management's plan is subject to modification based upon or in response to events and conditions which cannot be foreseen. Further, there can be no assurance that expected levels of profitability, or expansion of business or revenues through acquisition or reallocation of resources can be successfully achieved.



**MI ACQUISITION CORPORATION  
AND SUBSIDIARIES**

Consolidated Balance Sheets  
and Consolidating Schedule

October 31, 1999 and 1998



# MI ACQUISITION CORPORATION AND SUBSIDIARIES

## Table of Contents

	<b>Page</b>
Independent Auditors' Report	1
Consolidated Balance Sheets	2
Notes to Consolidated Balance Sheets	4
<b>Schedule:</b>	
I Consolidating Balance Sheet—October 31, 1999	12



4200 Norwest Center  
90 South Seventh Street  
Minneapolis, MN 55402

## Independent Auditors' Report

The Board of Directors  
MI Acquisition Corporation:

We have audited the accompanying consolidated balance sheets of MI Acquisition Corporation and subsidiaries as of October 31, 1999 and 1998. These consolidated balance sheets are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated balance sheets based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheets are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the balance sheets. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall balance sheet presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated balance sheets referred to above present fairly, in all material respects, the financial position of MI Acquisition Corporation and subsidiaries as of October 31, 1999 and 1998, in conformity with generally accepted accounting principles.

Our audits were made for the purpose of forming an opinion on the basic consolidated balance sheets taken as a whole. Schedule I is presented for purposes of additional analysis of the 1999 consolidated balance sheet rather than to present the financial position of the individual companies. This schedule is not a required part of the basic consolidated balance sheet. This information has been subjected to the auditing procedures applied in our audit of the basic consolidated balance sheet and, in our opinion, is fairly stated in all material respects in relation to the basic consolidated balance sheet taken as a whole.

**KPMG LLP**

December 17, 1999



KPMG LLP KPMG LLP a U.S. limited liability partnership is

# MI ACQUISITION CORPORATION AND SUBSIDIARIES

## Consolidated Balance Sheets

October 31, 1999 and 1998

Assets	1999	1998
Cash and cash equivalents	\$ 1,439,205	2,016,691
Receivables:		
Customers	1,390,753	1,114,183
Brokers, dealers and clearing organizations	27,660	68,617
Officers' and employees' notes and advances	130,696	128,944
Notes receivable	1,363,139	1,906,634
Other receivables	1,516,116	2,278,984
Total receivables	4,428,364	5,497,362
Securities inventory	26,382,956	17,712,874
Loan participation notes held for sale	12,131,039	4,948,907
Office equipment and leasehold improvements, at cost, less accumulated depreciation and amortization of \$5,140,291 in 1999 and \$4,681,390 in 1998	1,512,254	1,291,618
Deferred taxes	500,000	548,230
Goodwill, net of amortization	4,070,289	4,323,473
Other	862,408	1,061,855
 Total assets	 \$ 51,326,515	 37,401,010

See accompanying notes to consolidated balance sheets.

# MI ACQUISITION CORPORATION AND SUBSIDIARIES

## Consolidated Balance Sheets

October 31, 1999 and 1998

Liabilities and Shareholders' Equity	1999	1998
Demand notes payable	\$ 20,347,870	10,463,755
Accounts payable:		
Customers	374,262	1,134,376
Brokers, dealers and clearing organizations	161,130	883,543
Operating	1,035,395	1,217,506
Payable to borrowers or participants	6,227,950	1,416,586
Total accounts payable	7,798,737	4,652,011
Accrued liabilities	4,640,583	4,739,865
Income taxes	285,578	140,548
Securities sold, not yet purchased	302,992	11,501
Term debt	6,916,665	8,006,229
Total liabilities	40,292,425	28,013,909
Commitments and contingencies (note 8)		
Shareholders' equity:		
Common stock, \$.01 par value, 90,000,000 shares authorized; 938,950 issued and outstanding in 1999 and 1998, respectively; preferred stock, \$.01 par value, 10,000,000 shares authorized; none issued and outstanding	9,390	9,390
Additional paid-in capital	8,537,053	8,537,053
Retained earnings	2,487,647	1,340,658
Less: Note receivable from shareholder (note 10)	—	(500,000)
Total shareholders' equity	11,034,090	9,387,101
Total liabilities and shareholders' equity	\$ 51,326,515	37,401,010

## MI ACQUISITION CORPORATION AND SUBSIDIARIES

### Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

#### (1) Summary of Significant Accounting Policies

MI Acquisition Corporation (MIAC) and subsidiaries (the Company) provide investment banking and advisory services; securities sales, trading, and underwriting services; and services pertaining to the origination, financing, and sales of loan participation notes. MIAC is the parent company of Miller and Schroeder, Inc. (MSI) which in turn is the parent company of: Miller & Schroeder Financial, Inc. (MSF), Miller & Schroeder Investments Corporation (MSIC), Miller & Schroeder Small Business Capital Corporation (SBCC), Pooled Loan Marketing Corporation (PLMC), Miller & Schroeder Capital Corporation (MSCC), Miller & Schroeder Mortgage Corporation (MSMC), and Miller & Schroeder Asset Management, Inc. (MSAM).

MSF is a registered broker-dealer in securities under the Securities Exchange Act of 1934 and underwrites municipal and corporate securities. MSF also markets and trades fixed income and equity securities. Effective November 8, 1999, MSF's entire account base was converted to a third party clearing firm on a fully disclosed basis.

The primary business of MSIC is the origination, financing, and sale of loan participation notes and lease transactions which are collateralized by real estate and/or equipment. These transactions are sold through arrangements made by MSF in the form of nonrecourse loan participation notes. These sales are made to unaffiliated institutional and other investors. MSIC is also the servicing agent for loan participation notes of \$889 and \$639 million at October 31, 1999 and 1998, respectively.

All material intercompany balances and transactions have been eliminated in consolidation.

In 1997, MIAC was formed and acquired all of the issued and outstanding common stock of MSI for \$13,930,415. The transaction has been accounted for as a purchase. The cash purchase of outstanding MSI stock was partially financed by \$6,500,000 of term debt and the issuance of \$6,729,000 of common stock equity. The excess of the purchase price over the fair market value of identified net assets acquired of \$4,289,192 was allocated to goodwill. Goodwill is amortized on a straight-line basis over a period of 20 years. During fiscal 1998, the Company made purchase accounting adjustments resulting in a net reduction to goodwill of \$477,283.

In February 1998, MIAC acquired all of the issued and outstanding common stock of MSAM for \$813,331 including the assumption of net liabilities of \$542,864. The purchase was partially financed by the issuance of \$235,000 of common stock. The excess of the purchase price over the fair market value of identified net assets acquired of \$813,331 was allocated to goodwill. Goodwill is amortized on a straight-line basis over a period of 20 years.

The following is a summary of significant accounting policies followed by the Company:

##### (a) *Cash and Cash Equivalents*

For financial reporting purposes, the Company considers all investments with original maturities of three months or less to be cash equivalents. Included in cash at October 31, 1998 is \$1,200,000 segregated in a special bank account for the exclusive benefit of customers under Rule 15c3-3 of the Securities and Exchange Commission. Amounts required to be segregated, however, at October 31, 1998 was \$810,712 and no balance was required at October 31, 1999.

## MI ACQUISITION CORPORATION AND SUBSIDIARIES

### Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

**(b) Repurchase and Resale Transactions**

Transactions involving purchases of securities under agreements to resell (reverse repurchase agreements) or sales of securities under agreements to repurchase (repurchase agreements) are accounted for as financing transactions and are recorded at the contract amount plus accrued interest at which the securities will be subsequently resold or reacquired.

**(c) Securities Transactions and Loan Participation Notes Held for Sale**

Securities inventories are carried at estimated current market values.

Loan participation notes held for sale are carried at the lower of aggregate cost or market value. Substantially all of these loan participation notes were sold subsequent to October 31, 1999 and 1998 at prices that approximated their carrying values.

Purchases and sales of securities (including sales of loan participations) are recorded on a settlement date basis. The difference between trade date basis and settlement date basis accounting did not have a material effect on the Company's financial position.

**(d) Office Equipment and Leasehold Improvements**

Office equipment and leasehold improvements are stated at net book value. Equipment is depreciated on a straight-line or accelerated basis over estimated useful lives of five to seven years. Leasehold improvements are amortized using the straight-line method over the lesser of the respective lease term or estimated useful life of the improvements.

**(e) Use of Estimates**

The preparation of balance sheets in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the balance sheets. Actual results could differ from those estimates.

**(f) Stock-based Compensation**

The Company accounts for stock option grants using APB Opinion No. 25 (APB No. 25) and, accordingly, does not recognize compensation expense related to option grants. The Company, however, applies the disclosure provisions of Statement of Financial Accounting Standards No. 123 (SFAS No. 123), *Accounting for Stock-based Compensation*.

## MI ACQUISITION CORPORATION AND SUBSIDIARIES

### Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

#### (2) Securities Inventory and Loan Participation Notes Held for Sale

Securities positions, net of securities sold, not yet purchased, at October 31 are summarized as follows:

	<u>1999</u>	<u>1998</u>
Municipal securities	\$ 19,005,501	16,189,420
U.S. Government and Government agency securities	255,072	3,021
Other	<u>6,819,391</u>	<u>1,508,932</u>
Total	<u>\$ 26,079,964</u>	<u>17,701,373</u>

Loan participation notes held for sale at October 31, 1999 and 1998 totaling \$12,131,039 and \$4,948,907, respectively, represent the unsold portions of real estate mortgage and equipment loan financings with interest rates ranging from 7.25% to 10.00%.

#### (3) Notes Receivable

Notes receivable at October 31, 1999 and 1998, consist of \$25,000 and \$102,233, respectively, of short-term notes and \$1,338,139 and \$1,804,401 of long-term notes, respectively. The long-term notes are collateralized by real estate, have maturity dates ranging from 2001 through 2005 and have interest rates ranging from 9.41% to 12.43%. The short-term notes relate to temporary advances to issuers.

#### (4) Funds Held in Escrow

In connection with MSIC's loan servicing activities, funds for real estate taxes, insurance, and certain reserve accounts, including amounts for construction participations, are collected and held in escrow in accordance with loan documents. Funds held in escrow as of October 31, 1999 and 1998 were \$19,399,129 and \$20,231,657, respectively. These funds are not included in the Company's balance sheets.

#### (5) Financing Arrangements

##### (a) Demand Notes Payable

MSF has financing arrangements with several financial institutions and may borrow up to an aggregate of \$51 million. MSF's trading securities and certain assets are pledged as collateral under these arrangements. Amounts borrowed under these arrangements fluctuate daily based on the timing of customer and broker-dealer trades and issues underwritten by MSF. The terms and expiration dates of these facilities are periodically renegotiated. At October 31, 1999 and 1998, \$11,050,000 and \$5,875,000 were outstanding and \$39,950,000 and \$45,125,000 were available on these facilities, respectively. MSF is expected to maintain agreed-upon compensating balances with the financial institutions. MSF's interest rates on these borrowings fluctuate with the daily federal funds rate. The rates in effect at October 31, 1999 and 1998, ranged from 6.55% to 6.875% and 6.925% to 7.0%, respectively.

# MI ACQUISITION CORPORATION AND SUBSIDIARIES

## Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

MSIC has a \$5 million credit facility with a financial institution, and may draw up to \$10 million on MSF's credit facility. At October 31, 1999 and 1998, MSIC had \$7,825,000 and \$4,500,000 outstanding on these credit facilities, respectively. MSIC may borrow funds under terms of the demand note to finance loan participation notes up to predefined amounts, with the underlying notes pledged as collateral. Interest accrues at the financial institution's base rate plus 1% (9.25% at October 31, 1999 and 9.0% at October 31, 1998).

SBCC has a \$1 million credit facility with a financial institution which is secured by notes receivable, and may draw up to \$4 million on MSF's credit facility. At October 31, 1999, there was a balance on these facilities of \$1,284,000 and at October 31, 1998, \$0 was outstanding. Interest accrues at the financial institution's federal funds rate plus 1.5% (6.875% at October 31, 1999).

MSCC has a note payable to a limited partnership of \$188,870 at October 31, 1999 that is payable on demand. Interest accrues on this note at 7.25%.

### (b) Term Debt

Term debt outstanding as of October 31 consisted of:

	<u>1999</u>	<u>1998</u>
Pollution Control Financing Certificates collateralized by certain notes receivable guaranteed by the Small Business Administration:		
9%, due in annual installments through October 2001,	\$ 1,095,000	1,575,000
12.25%, due in March 2005.	182,000	182,000
Notes payable, 8.5%, due in monthly installments through February 2000, collateralized by equipment.	3,855	14,789
Notes payable, (8.45% to 9.20% and 10.375% at October 31, 1999 and 1998, respectively), due in monthly installments through June 2003, collateralized by certain furniture and office equipment.	766,566	1,105,192
Notes payable, prime rate plus 1% (9.25% and 9.0% at October 31, 1999 and 1998, respectively), due in monthly installments through October 2001, collateralized by note receivable.	399,988	599,992
Note payable to shareholder of the Company, 6.5%, due in annual installments through January 2003.	289,256	289,256

# MI ACQUISITION CORPORATION AND SUBSIDIARIES

## Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

	<u>1999</u>	<u>1998</u>
Revolving line of credit, prime rate plus 1% (9.25% and 9.0% at October 31, 1999 and 1998, respectively), due in quarterly installments through September 2002.	1,680,000	2,240,000
Notes payable, federal funds rate plus 1.5% (6.875% and 7.0% at October 31, 1999 and 1998, respectively), due September 2002 or on demand, collateralized by marketable securities.	2,000,000	2,000,000
Note payable to shareholder of the Company, 7% due December 15, 1999.	<u>500,000</u>	<u>—</u>
	<u>\$ 6,916,665</u>	<u>8,006,229</u>

The revolving line of credit is collateralized by all assets of the Company. The Company is required to meet certain operating, capital, coverage, and debt related covenants under these agreements.

Maturities of term debt outstanding at October 31, 1999 are as follows:

2000	\$ 2,170,108
2001	1,512,906
2002	2,660,904
2003	390,747
2004	—
Thereafter	<u>182,000</u>
	<u>\$ 6,916,665</u>

### (6) Income Taxes

The Company files combined state income tax returns, except in certain states where separate returns are filed, and files a consolidated federal income tax return.

The Company had net deferred tax assets of \$500,000 and \$548,230 at October 31, 1999 and 1998, respectively. The temporary differences that give rise to a significant portion of the deferred tax asset relate primarily to deferred income and compensation related accruals.

## MI ACQUISITION CORPORATION AND SUBSIDIARIES

### Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. In order to fully realize the deferred tax asset, the Company will need to generate sufficient future taxable income. Based upon the levels of historical taxable income, projections of future taxable income, and the ability to carry losses back, management believes it is more likely than not that the Company will realize the benefits of the deferred tax asset as of October 31, 1999 and 1998.

#### (7) Net Capital Requirements

As a broker-dealer, MSF is subject to the Securities and Exchange Commission Uniform Net Capital Rule (Rule 15c3-1), which requires the maintenance of minimum net capital. MSF has elected to use the alternative method, permitted by the Rule, which requires that MSF maintain minimum net capital, as defined, equal to the greater of \$250,000 or 2% of aggregate debit balances arising from customer transactions, as defined. At October 31, 1999, MSF's net capital, as defined, of \$4,743,999 and was 331% of aggregate debit balances and was \$4,493,999 in excess of the minimum net capital required.

#### (8) Commitments and Contingencies

##### (a) Underwriting Commitments

In the ordinary course of business, MSF enters into underwriting commitments. Transactions relating to such underwriting commitments that were open at October 31, 1999 have subsequently settled and had no material affect on the financial statements.

##### (b) Operating Leases

The Company has operating lease commitments expiring at various dates for its offices and certain equipment. Future minimum payments under operating leases are as follows:

Fiscal year:	
2000	\$ 1,572,764
2001	1,485,585
2002	1,481,509
2003	1,167,656
2004	1,053,599
Thereafter	2,094,904

##### (c) Employee Benefit Plan

The Company has a 401(k) plan that allows employees to contribute a portion of their compensation.

## MI ACQUISITION CORPORATION AND SUBSIDIARIES

### Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

**(d) Contingencies**

In the normal course of business, the Company, from time to time, becomes involved in claims and litigation that may ultimately result in a liability to the Company. It is the opinion of management that facts known at the present time do not indicate that the ultimate resolution of any such claims or litigation would have a material effect on the Company's financial position.

**(e) Other**

As of October 31, 1999 and 1998, MSIC had committed to advance \$144,369,047 and \$47,440,244, respectively, in construction loans. Concurrent with this commitment, MSIC has entered into commitments to sell these loans in the form of nonrecourse loan participation notes.

**(9) Financial Instruments with Off-Balance-Sheet Risk**

In the ordinary course of business, the Company's securities activities involve execution, settlement, and financing of various securities transactions as principal and agent. These activities may expose the Company to credit and market risks in the event customers, other brokers and dealers, banks, depositories, or clearing organizations are unable to fulfill contractual obligations. Such risks may be increased by volatile trading markets.

The Company records customer securities transactions on a settlement date basis. The Company is therefore exposed to off-balance-sheet risk of loss on unsettled transactions in the event customers and other counterparties are unable to fulfill contractual obligations.

The Company also may assume short positions in its inventory. These transactions result in off-balance-sheet market risk as the Company's ultimate obligation to satisfy the short sale may exceed the amount recognized in the balance sheets.

The Company also may lend money subject to reverse repurchase agreements. All positions are collateralized, primarily with U.S. Government or U.S. Government agency securities. The Company's policy is to take physical possession of securities purchased under agreements to resell. Such transactions may expose the Company to risk in the event such borrowers do not repay the loans and the value of collateral held is less than that of the underlying receivable. These agreements provide the Company with the right to maintain the relationship between market value of the collateral and the receivable.

The Company does not believe that it has any significant concentrations of credit risk.

# MI ACQUISITION CORPORATION AND SUBSIDIARIES

## Notes to Consolidated Balance Sheets

October 31, 1999 and 1998

### (10) Stock Option Plans

The Company maintains two fixed stock compensation plans, the MI Acquisition Corporation Stock Option Plan and the Director Stock Option Plan, which are used to provide stock incentives to key employees and outside directors of the Company. Each Plan authorizes the grant of incentive and/or non-qualified options with an exercise price equal to the fair value of the common stock as of the grant date. Vesting periods for the options range from immediately to five years and expire ten years from the date of grant. At October 31, 1999 and 1998, 136,287 and 158,912 shares of common stock, respectively, were available for grant under the Stock Option Plan and 39,500 and 47,000 shares were available for grant under the Director Stock Option Plan.

The company granted 50,000 options during the year ended October 31, 1997 to a director of the company in connection with the MSI acquisition. These options were exercised effective August 1, 1998 and 50,000 shares were issued at a price of \$10 per share. The Company recorded a loan to the director for this subscription. The \$500,000 outstanding balance of this note receivable was collected in full during fiscal 1999.

The weighted average per-share fair value of options granted during fiscal 1999 and 1998 was \$3.54 and \$1.87, respectively. The fair value of each option granted is estimated on the date of grant using the Minimum Value Method with the following weighted average assumptions used for grants in 1999 and 1998; dividend yields of 0%; expected volatility of 0%; risk-free interest rate of 5.97% in 1999 and 4.22% in 1998; and expected life of 5 years in 1999 and 5 years in 1998.

The following table summarizes the activity related to the Company's stock options for the year ended October 31, 1999 and 1998:

	1999		1998	
	Shares	Weighted average exercise price	Shares	Weighted average exercise price
Options outstanding at beginning of year	144,088	\$ 10.00	50,000	\$ 10.00
Granted	34,000	13.72	144,088	10.00
Exercised	—	—	(50,000)	10.00
Canceled, forfeited or expired	(3,875)	10.00	—	—
Options outstanding at end of year	174,213	\$ 10.73	144,088	\$ 10.00

The options outstanding at October 31, 1999 and 1998 have a weighted average remaining contractual life of nine and nine years, respectively.

## MI ACQUISITION CORPORATION AND SUBSIDIARIES

Consolidating Balance Sheet

October 31, 1999

	Assets										Eliminations	Consolidated
	MIAC	MSI	MSF	MSIC	PLMC	SBC	MSCC	MSMC	MSAM			
Cash and cash equivalents	\$ 769	—	753,002	329,452	130	352,277	1,321	—	2,254	—	—	1,439,205
Receivables:												
Customers	—	—	1,390,753	—	—	—	—	—	—	—	—	1,390,753
Brokers, dealers and clearing organizations	—	—	27,660	—	—	—	—	—	—	—	—	27,660
Officers' and employees' notes and advances	—	—	84,863	—	—	—	—	—	45,833	—	—	130,696
Income tax receivable	517,892	552,510	—	—	18,276	—	—	—	384,798	(1,473,476)	—	—
Notes receivable	—	—	25,000	—	1,263,139	—	75,000	—	—	—	—	1,363,139
Other receivables	—	—	1,268,802	121,614	4,017	—	—	17,000	104,683	—	—	1,516,116
Total receivables	517,892	552,510	2,797,078	121,614	1,285,432	—	75,000	17,000	535,314	(1,473,476)	—	4,428,364
Securities inventory	—	—	26,382,956	—	—	—	—	—	—	—	—	26,382,956
Due from affiliates	—	—	603,153	6,081,200	67,629	122,686	58,192	597,750	—	(7,530,610)	—	—
Loan participation notes held for sale	—	—	—	10,846,459	—	1,284,580	—	—	—	—	—	12,131,039
Office equipment and leasehold improvements	—	1,512,254	—	—	—	—	—	—	—	—	—	1,512,254
Investment in subsidiaries	9,070,859	9,253,734	—	—	—	—	—	—	—	(18,324,593)	—	—
Deferred taxes	—	90,000	335,000	50,000	—	—	15,000	—	10,000	—	—	500,000
Goodwill	4,070,289	—	—	—	—	—	—	—	—	—	—	4,070,289
Other	86,517	165,869	535,153	—	18,694	—	56,175	—	—	—	—	862,408
Total assets	\$ 13,746,326	11,574,367	31,406,342	17,428,725	1,371,885	1,759,543	205,688	614,750	547,568	(27,328,679)	—	51,326,515
Liabilities and Shareholders' Equity												
Demand notes payable	\$ —	—	11,050,000	7,825,000	—	1,284,000	188,870	—	—	—	—	20,347,870
Accounts payable:												
Customers	—	—	374,262	—	—	—	—	—	—	—	—	374,262
Brokers, dealers and clearing organizations	—	—	161,130	—	—	—	—	—	—	—	—	161,130
Operating	—	—	1,027,176	—	8,142	77	—	—	—	—	—	1,035,395
Payable to borrowers or participants	—	—	—	6,227,950	—	—	—	/	—	—	—	6,227,950
Due to affiliates	1,986,249	3,860,375	—	—	403,593	—	—	—	1,280,393	(7,530,610)	—	—
Income taxes	—	—	555,412	980,527	—	74,062	22,425	126,628	—	(1,473,476)	—	285,578
Securities sold, not yet purchased	19,264	503,181	302,992	—	—	—	—	—	—	—	—	302,992
Accrued liabilities	4,180,000	1,166,554	3,454,403	525,741	34,979	—	—	—	103,015	—	—	4,640,583
Term debt	—	—	3,855	—	1,277,000	—	—	—	289,256	—	—	6,916,665
Total liabilities	6,185,513	5,530,110	16,929,230	15,559,218	1,723,714	1,358,139	211,295	126,628	1,672,664	(9,004,086)	—	40,292,425
Shareholders' equity:												
Common stock	9,390	99,063	500,000	10,000	1,000	100	1,000	1,000	10	(612,173)	—	9,390
Additional paid-in capital	8,537,053	6,000,000	7,950,000	140,600	—	305,900	—	—	22,964	(14,419,464)	—	8,537,053
Retained earnings	(985,630)	(54,806)	6,027,112	1,718,907	(352,829)	95,404	(6,607)	487,122	(1,148,070)	(3,292,956)	—	2,487,647
Total shareholders' equity	7,560,813	6,044,257	14,477,112	1,869,507	(351,829)	401,404	(5,607)	488,122	(1,125,096)	(18,324,593)	—	11,034,090
Total liabilities and shareholders' equity	\$ 13,746,326	11,574,367	31,406,342	17,428,725	1,371,885	1,759,543	205,688	614,750	547,568	(27,328,679)	—	51,326,515

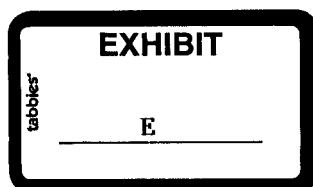
See accompanying independent auditors' report.



**MILLER & SCHROEDER, INC.  
AND SUBSIDIARIES**

Consolidated Financial Statements  
and Consolidating Schedules

October 31, 2000 and 1999



# MILLER & SCHROEDER, INC. AND SUBSIDIARIES

## Table of Contents

	<b>Page</b>
Independent Auditors' Report	1
Consolidated Balance Sheets	2
Consolidated Statements of Operations	4
Consolidated Statements of Shareholders' Equity	5
Consolidated Statements of Cash Flows	6
Notes to Consolidated Financial Statements	7
<b>Schedules</b>	
I Consolidating Balance Sheet—October 31, 2000	16
II Consolidating Statement of Operations— For the year ended October 31, 2000	17



4200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

## Independent Auditors' Report

The Board of Directors  
Miller & Schroeder, Inc.:

We have audited the accompanying consolidated balance sheets of Miller & Schroeder, Inc. (formerly MI Acquisition Corporation) and subsidiaries as of October 31, 2000 and 1999, and the related consolidated statements of operations, shareholders' equity and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Miller & Schroeder, Inc. and subsidiaries as of October 31, 2000 and 1999, and the results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Our audits were made for the purpose of forming an opinion on the basic consolidated financial statements taken as a whole. Schedules I and II are presented for purposes of additional analysis of the consolidated financial statements rather than to present the financial position and the results of operations of the individual companies. These schedules are not a required part of the basic consolidated financial statements. This information has been subjected to the auditing procedures applied in our audits of the basic consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic consolidated financial statements taken as a whole.

**KPMG LLP**

December 8, 2000, except as to note (11), which is as of December 15, 2000



KPMG LLP, KPMG LLP, a U.S. limited liability partnership, is  
a member of KPMG International, a Swiss association.

# MILLER & SCHROEDER, INC. AND SUBSIDIARIES

## Consolidated Balance Sheets

October 31, 2000 and 1999

Assets	2000	1999
Cash and cash equivalents	\$ 862,016	1,439,205
Receivables:		
Customers	—	1,390,753
Brokers, dealers and clearing organizations	2,306	27,660
Officers' and employees' notes and advances	879,107	130,696
Notes receivable	789,605	1,363,139
Income taxes	697,891	—
Other receivables	1,287,524	1,516,116
Total receivables	3,656,433	4,428,364
Securities inventory	17,793,176	26,382,956
Loan participation notes held for sale	301,651	12,131,039
Office equipment and leasehold improvements, at cost, less accumulated depreciation and amortization of \$3,398,537 in 2000 and \$5,140,291 in 1999	2,670,803	1,512,254
Deferred taxes	500,000	500,000
Goodwill, net of amortization	5,413,113	4,070,289
Other	1,245,788	862,408
 Total assets	 \$ 32,442,980	 51,326,515

See accompanying notes to consolidated financial statements.

# MILLER & SCHROEDER, INC. AND SUBSIDIARIES

## Consolidated Balance Sheets

October 31, 2000 and 1999

Liabilities and Shareholders' Equity	2000	1999
Cash overdrafts	\$ 31,346	—
Demand notes payable	1,140,945	20,347,870
Accounts payable:		
Customers	20,000	374,262
Clearing firm	6,893,110	161,130
Operating	976,848	1,035,395
Payable to borrowers or participants	4,014,318	6,227,950
Total accounts payable	11,904,276	7,798,737
Accrued liabilities	3,608,240	4,640,583
Income taxes	—	285,578
Securities sold, not yet purchased	5,030	302,992
Term debt	5,166,542	6,916,665
Total liabilities	21,856,379	40,292,425
Commitments and contingencies (note 8)		
Shareholders' equity:		
Common stock, \$.01 par value, 90,000,000 shares authorized; 1,082,450 and 938,950 issued and outstanding in 2000 and 1999, respectively; preferred stock, \$.01 par value, 10,000,000 shares authorized; none issued and outstanding	10,825	9,390
Additional paid-in capital	10,060,318	8,537,053
Retained earnings	515,458	2,487,647
Total shareholders' equity	10,586,601	11,034,090
Total liabilities and shareholders' equity	\$ 32,442,980	51,326,515

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
Brian F. Leonard, Trustee,  
Plaintiff,

vs.

James E. Iverson,  
Defendants.

)  
)  
)  
) BKY Case Nos.  
) 02-40284 to 02-40286  
)  
)  
)  
)  
)  
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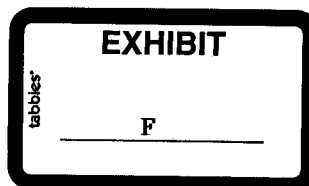
DEPOSITION OF DAVID B. LARSON

January 23, 2004

Reported by: Peggy C. Siino, CSR No. 6263



CERTIFIED COPY



1 Deposition of David B. Larson, taken at  
2 8954 Rio San Diego, Suite 602, San Diego, California,  
3 on Friday, January 23, 2004, at 9:00 a.m., before  
4 Peggy C. Siino, Certified Shorthand Reporter, in and  
5 for the State of California.

6

7 APPEARANCES:

8 PLAINTIFF:

9 LEONARD, O'BRIEN, SPENCER, GALE & SAYRE

10 BY: MATTHEW R. BURTON  
11 100 South Fifth Street, #1200  
12 Minneapolis, MN 55402  
13 (612) 332-1030

14

DEFENDANT:

15

MESSERLI & KRAMER, P.A.

16 BY: JOSEPH W. LAWVER  
17 150 S. Fifth Street, Suite 1800  
18 Minneapolis, MN 55402  
19 (612) 672-3698  
20  
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I N D E X

DEPOSITION OF: David B. Larson

EXAMINED BY	PAGE
Mr. Burton	4

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
A	1997 file from Larson, Ludwig & Stokes LLP re: Miller & Schroeder sale	6

1 San Diego, California; January 23, 2004; 10:25 a.m.

2 James E. Iverson

3 being first duly sworn, testified as follows:

4

5 EXAMINATION

6 BY MR. BURTON:

7 Q. Could you please state your full name for the  
8 record.

9 A. David Bruce Larson.

10 Q. Mr. Larson, you are a certified public  
11 accountant?

12 A. Yes.

13 Q. You're with the firm of Larson, Ludwig & Stokes  
14 LLP?

15 A. Yes.

16 Q. Have you had your deposition taken before?

17 A. One time.

18 Q. I'm just going to quickly run over a few rules  
19 with you to make things move quicker.

20 A. Yes. Thank you.

21 Q. We have to be careful to not speak over each  
22 other when I'm asking you questions and you're  
23 answering, because the court reporter is taking down  
24 what we're saying and she can only take down what one of  
25 us says at a time. So please wait until I'm finished

1 asking a question before you answer, and I'll wait until  
2 you've finished answering.

3 Also please, when you respond, do so verbally.  
4 If you nod your head or say "uh-huh" or "huh-uh," she  
5 can't take that down either.

6 And also I don't anticipate this being a long  
7 deposition or that I'm going to ask any questions that  
8 are hard to understand. But if you don't understand  
9 what I'm asking, please let me know, because I want you  
10 to answer the question I'm asking and understand what  
11 the answer is.

12 Do you understand those rules?

13 A. Yes.

14 Q. Normally I'd say if you need a break, I'd let  
15 you have a break. But I don't think we'll make it to  
16 the point where you need a break.

17 Now, you're appearing today pursuant to a  
18 subpoena that was served upon you in this adversary  
19 proceeding, correct?

20 A. Yes.

21 Q. And you produced some documents this morning  
22 for me to review, correct?

23 A. Yes.

24 Q. And those records are your records with respect  
25 to the tax return for Mr. James Iverson for the year

1 1997?

2 A. Yes.

3 Q. And in those records you have your worksheets  
4 and information that was communicated to you by  
5 Mr. Iverson to assist you in preparing the returns,  
6 correct?

7 A. Yes. Only as they relate to the sale of  
8 Miller & Schroeder.

9 Q. So, in other words, you have other records  
10 related to Mr. Iverson not being produced because  
11 they're not relevant to this inquiry?

12 A. Yes.

13 (Exhibit A was marked for identification.)

14 BY MR. BURTON:

15 Q. I'll hand you what has been marked as  
16 Exhibit A.

17 Do you recognize this letter and the  
18 attachments to it?

19 A. Yes.

20 Q. Is this a true and accurate copy of a letter  
21 that you sent to Mr. Iverson in August 2003 transmitting  
22 what I assume to be essentially the same records that  
23 you produced here this morning?

24 A. Yes.

25 Q. And in there is Mr. Iverson's tax return for

1 1997?

2 A. Yes.

3 Q. And is that a true and accurate copy of  
4 Mr. Iverson's return?

5 A. Well, it appears to be. I mean I would have to  
6 compare it page to page to be absolutely certain. But,  
7 yes, it does look like his actual 1997 return.

8 MR. LAWVER: Excuse me. Are these documents  
9 that we produced to you?

10 MR. BURTON: Yeah.

11 MR. LAWVER: Okay.

12 BY MR. BURTON:

13 Q. What do you understand to be the purchase price  
14 for Mr. Iverson's stock in Miller & Schroeder?

15 A. You mean the purchase price or the sales price?  
16 What he sold it for?

17 Q. Why don't you explain the difference between  
18 the two to me.

19 A. Because his purchase price is \$617,589. That's  
20 what he paid for it.

21 Q. That's his basis, correct?

22 A. It's his basis.

23 Q. What did he sell his shares to MI Acquisition  
24 for?

25 A. \$6,704,931.

1 Q. And is that number after an adjustment was  
2 made?

3 A. Yes.

4 Q. Was it ever discussed with you that a  
5 noncompete may have been part of the purchase price?

6 A. Yes.

7 Q. Okay. And --

8 MR. LAWVER: Objection, Counsel. When you say,  
9 "a part of the purchase price," for the stocks? Or part  
10 of the sale as a condition of the sale?

11 BY MR. BURTON:

12 Q. Was it ever discussed with you that a  
13 noncompete agreement be part of the sale price of  
14 Mr. Iverson's stock to MI Acquisition Corporation?

15 MR. LAWVER: Again, I'll object, Counsel. I  
16 mean sale price of the stock?

17 MR. BURTON: You can answer.

18 THE WITNESS: It was not part of the sales  
19 price, but it was part of the transaction that there  
20 would be a covenant not to compete.

21 BY MR. BURTON:

22 Q. Okay. So how did you learn of that?

23 A. Well, it was in the documents that were sent to  
24 me.

25 Q. Okay. And you're referring to a sheet that

1 says, "Miller & Schroeder, Inc. Sale," at the top?

2 A. Yes.

3 Q. It looks like it's a worksheet from Arthur  
4 Andersen?

5 A. Yes.

6 Q. Actually at the very top it says, "Covenant Not  
7 to Compete, \$1.4 million."

8 Do you see that?

9 A. Yes.

10 Q. Is it your understanding that that is  
11 consideration for the shares?

12 A. No.

13 Q. Okay. Why is that? Why is it that you don't  
14 tie the two?

15 A. Just because normally a covenant not to compete  
16 is not part of the sales price. It is payments made for  
17 Jim not to compete.

18 Q. There's another --

19 A. There's a very different way you treat it for  
20 tax purposes too. So there is very -- there has to be a  
21 very clear distinction.

22 Q. Okay. There's another adversary proceeding  
23 pending against Mr. Roger Wickner, who was an equal  
24 shareholder to Mr. Iverson. And I want to ask you a  
25 question, if I can find the item that I'm looking for.

1     Actually, I'll strike that.

2                   Can you take a look at Exhibit A and to a sheet  
3     that you received, I assume from Mr. Iverson, that shows  
4     how the closing was conducted. I think you're at that  
5     page.

6           A.     It's entitled, "James E. Iverson Purchase  
7     Price."

8           Q.     It shows \$7.3 million, roughly, at the top of  
9     the page.

10          A.     Yes.

11          Q.     In preparing the tax returns, did you review  
12     this?

13          A.     I don't recall if I had this at the time that I  
14     did the return or not.

15          Q.     Do you see under the top heading it says,  
16     "Adjustment to Base Purchase Price"?

17          A.     Yes.

18          Q.     And there's actually two Item No. 3's with a  
19     list of I'll call them obligations to the two entities.

20                   Do you see that?

21          A.     Yes.

22          Q.     Do you recall how it was represented to you how  
23     those were treated in the transaction?

24          A.     Yes. I did ask Jim about that, and he said  
25     that they were taken out of his proceeds.

1 Q. Did he tell you that -- what did he tell you as  
2 to whether they were actually paid to the company?

3 A. Yes. They were taken out of his proceeds,  
4 which, in my mind, is the same as payment.

5 Q. Did he ever provide you with any evidence that  
6 those monies were then paid to satisfy those  
7 obligations?

8 A. Well, this is the evidence. But, again, I  
9 don't recall if I actually had this at the time that I  
10 did the return or not.

11 Q. If these items had not been paid, it may have  
12 been significant because he may have had forgiveness of  
13 debt income; is that correct?

14 A. Yes. It would be very significant, yes.

15 Q. And is the forgiveness of debt income the  
16 reason why it would be significant?

17 A. Yes.

18 Q. And, again, this page that you're looking at,  
19 the closing statement, is that the only item that you  
20 have with respect to the satisfaction of those  
21 obligations?

22 A. Yes.

23 Q. If you go to Schedule D of his '97 return --

24 A. Okay. I'm there.

25 Q. There's no forgiveness of debt income on his

1 return, is there?

2 A. No, there's not.

3 Q. On Part II of the schedule, it essentially  
4 shows the sales price minus his basis, correct?

5 A. That's correct.

6 Q. And then it shows his gain and then you use  
7 that to compute the taxes from there; is that  
8 correct?

9 A. That is correct.

10 Q. How was the noncompete treated in the return or  
11 with respect to Mr. Iverson's taxes? Was there any  
12 treatment, or is it just income every year after that?

13 A. In each year that he received an amount under  
14 the covenant, we treat it as ordinary income.

15 Q. So in subsequent years you would see income  
16 from the noncompete, assuming he was paid on it?

17 A. Yes. Whatever the documentation we received in  
18 subsequent years documenting the amount that we included  
19 as ordinary income.

20 Q. Do you know who prepared the worksheets that  
21 are in Exhibit A that are the first four and five pages  
22 there?

23 A. It was Arthur Andersen and Company. I don't  
24 know the individual who did it.

25 Q. And would they have been representing

1 Miller & Schroeder? Or who would they have been  
2 representing?

3 A. I believe that they were the CPA firm for  
4 Miller & Schroeder.

5 Q. Did you discuss this case with Mr. Iverson  
6 prior to your deposition?

7 A. I believe I had one phone call with him a few  
8 months ago where we briefly discussed it.

9 Q. Did that result in your letter of August 8,  
10 2003, or was it after that?

11 A. You know, I've had two calls with him. One was  
12 a very brief call asking to send that information, and I  
13 had one call with him afterward.

14 Q. And can you describe that call, the second  
15 call?

16 A. Yes. We discussed this transaction, and I told  
17 him that I thought everything was correct in the return  
18 and that we had handled the forgiveness of debt, or,  
19 excuse me, the payback of the loans properly.

20 Q. And when you say, "the payback of the loans,"  
21 you really have to assume that they were repaid.

22 A. Well, at the time of the phone call with Jim, I  
23 had this sheet, the one we referred to earlier,  
24 "James E. Iverson Closing Proceeds," and I looked at  
25 that, I tied everything that we did into the tax return,

1 and I just called to let Jim know that I think  
2 everything was done properly.

3 Q. And, again, your opinion on that would assume  
4 that those debts were actually satisfied as part of that  
5 closing.

6 A. Well, it's not my opinion. I mean based on  
7 this piece of paper, they were repaid. And, of course,  
8 I am relying on this piece of paper. But it appeared,  
9 based on that, that they were taken out of the proceeds  
10 of what he received, and, therefore, the tax return was  
11 done properly since there was no forgiveness of debt.

12 Q. And your knowledge of the transaction doesn't  
13 transcend that piece of paper, though, correct?

14 A. I have no more detailed knowledge than what's  
15 right here on this piece of paper. We never did any  
16 work for the company.

17 MR. BURTON: I don't think I have any more  
18 questions for Mr. Larson.

19 MR. LAWVER: I have no questions.

20 MR. BURTON: I don't know how it works here in  
21 California with respect to review of a deposition  
22 transcript. Typically in Minnesota you have the right  
23 to read and review the deposition transcript to check  
24 for errors and make corrections in your statements if  
25 you think there needs to be, and the court reporters

1 handle that differently and we can talk to the court  
2 reporter at the end of the deposition about how she does  
3 that.

4 But you would have the right to review the  
5 deposition transcript if you would like to.

6 THE WITNESS: The only thing I misspoke was  
7 that one sentence where I started to say, "forgiveness  
8 of debt," and where I corrected it and said, "payback of  
9 the loan," you know, withholding from Jim's proceeds.

10 Is that something I should correct? Or is that  
11 something that I corrected it in the deposition and I'm  
12 okay?

13 MR. BURTON: I think that Mr. Lawver and I  
14 would agree that you corrected that and there is no lack  
15 of clarity in your testimony as to that matter.

16 MR. LAWVER: You can waive the signing. I  
17 don't think there's any problem with you waiving the  
18 signing.

19 THE WITNESS: Waive the signing?

20 MR. LAWVER: In Minnesota the witness can waive  
21 the reading and signing of the transcript.

22 THE WITNESS: Oh.

23 MR. LAWVER: It speeds things up a little bit

24 THE WITNESS: I'm okay with that.

25 (The deposition was concluded at 9:20 a.m.)

1 I hereby declare under penalty of perjury that  
2 the foregoing is my deposition under oath; that these  
3 are the questions asked of me and my answers thereto;  
4 that I have read my deposition and have made the  
5 necessary corrections, additions or changes to my  
6 answers that I deem necessary.

7 In witness thereof, I hereby subscribe my name,  
8 this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

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\_\_\_\_\_  
David B. Larson

(Signature waived)

1 STATE OF CALIFORNIA )  
2 : SS.  
3 COUNTY OF SAN DIEGO )

4 I, Peggy C. Siino, CSR NO. 6263, hereby certify  
5 that I reported in shorthand the above proceedings on  
6 Friday, January 23, 2004, at 8954 Rio San Diego, Suite  
7 602, in the City of San Diego, County of San Diego,  
8 State of California; and I do further certify that the  
9 above and foregoing pages, numbered from 4 to 15,  
10 inclusive, contain a true and correct transcript of all  
11 of said proceedings.

12 And I further certify that I am a disinterested  
13 person and am in no way interested in the outcome of  
14 said action, or connected with or related to any of the  
15 parties in said action, or to their respective counsel.

16 The dismantling, unsealing or unbinding of the  
17 original transcript will render the reporter's  
18 certificate null and void.

19 Dated: February 6, 2004.  
20  
21

22   
23 \_\_\_\_\_  
24 Peggy C. Siino  
25 CSR No. 6263

LARSON, LUDWIG & STOKES LLP  
CERTIFIED PUBLIC ACCOUNTANTS

David P. Bohne  
Charles F. Combs  
Jeanne M. Emerson  
David B. Larson  
Robert P. Ludwig  
Lary H. Stokes

8954 Rio San Diego Drive  
Suite 602  
San Diego, California 92108-1607  
Telephone (619) 294-9090  
Facsimile (619) 294-9091

August 8, 2003

Mr. James Iverson  
31300 Lobo Canyon Road  
Agoura Hills, CA 91301

Fax: (818)874-1429

Dear Jim:

Here are the pages we have in our 1997 file relating to the Miller & Schroeder sale. Let me know if there is anything else that you need.

Sincerely,

LARSON, LUDWIG & STOKES LLP

By

David B. Larson

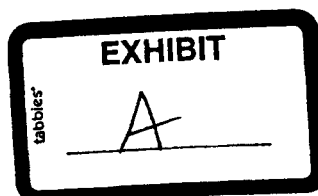


EXHIBIT	A
WITNESS	LARSON
DATE	1-23-04
KRAMM&ASSOCIATES REALTIME REPORTING	

**Miller Schroeder  
Sale**

**November 6, 1997**

**Final**

**Purchase Price Reconciliation:**

Description		Amount
Base Stock Price		15,000,000
Book Value Adjustment Proposed by Buyers	(1,918,962)	
Global Adjustment	675,991	
Book Value Adjustment to Purchase Price		(1,242,971)
Purchase Price of Stock		13,757,029
Cash Due on Sale		15,000,000
Cash Repaid		
	Gross Adjustment	(1,274,874)
	Interest	31,903
	Purchase Price of Notes	(118,531)
Notes Purchased by Sellers		118,531
Total Consideration for Stock		13,757,029

**Notes Purchased by Seller:**

Obligor	Book Value		Sellers' Cost	Assumed FMV
	Original	As Adjusted		
Rideau	140,000	-	1	-
Water World, Senior	487,480	117,000	118,531	118,531
Water World, Sub	162,277	-	1	-
Total	789,757	117,000	118,533	118,531

\* The fair market value will be additional proceeds for computing the tax gain on the sale of stock.  
If the notes are collected at other than the FMV, such difference will be a taxable gain or loss.

**Reconciliation of Cash Repaid:**

Description	Wikner	Iverson	Erickson	Total
	48.74%	48.74%	2.52%	100.00%
Cash Repaid - Principal	(605,802)	(605,802)	(31,367)	(1,242,971)
Cash Repaid - Interest	(15,549)	(15,549)	(805)	(31,903)
Purchase of Notes	(59,266)	(59,266)		(118,531)
Total	(680,616)	(680,616)	(32,172)	(1,393,405)

3/4/98  
11:45 AM**Miller Schroeder, Inc.  
Sale****Final****Assumptions:**

Covenant Not to Compete	1,400,000	4 Years
Base Stock Price	15,000,000	
Book Value Adjustment (See Attached)	(1,242,971)	
Purchase Price of Stock	13,757,029	
Cash Due on Sale	15,000,000	
Cash Repaid (See Attached)	(1,361,502)	
Net Cash Received	13,638,498	
Notes Received	118,531	
Total Consideration for Stock	13,757,029	
Federal Tax Rates: Ordinary	40.0%	40.0%
Capital Gain	20.0%	20.0%
State Tax Rate	0.0%	9.3%
Interest Rate for Present Valuing	8.00%	

Description	Wikner	Iverson	Erickson	Total
	48.74%	48.74%	2.52%	100.00%

**Sale of Stock:**

Proceeds	6,704,931	6,704,931 <sup>1310733</sup>	347,167	13,757,029
Basis	(427,977)	(572,500)	(50,000)	(1,050,477)
Transaction Costs	(24,369)	(24,369) <sup>121844</sup>	(1,262)	(50,000)
Net Gain	6,252,585	6,108,062	295,905	12,656,552

Share of Notes	48.74%	48.74%	2.52%	100%
----------------	--------	--------	-------	------

**Present Value of Consideration and Other Items:**

Initial Cash Received	7,310,733	7,310,733	378,534	15,000,000
Cash Repaid Principal & Interest	(680,616)	(680,616)	(32,172)	(1,393,405)
Covenant Not to Compete	72,917	72,917	-	145,833
Less Transaction Costs	(24,369)	(24,369)	(1,262)	(50,000)
Less Taxes	(1,265,381)	(1,800,550)	(84,333)	
Less Loan Payable to Company	(631,000)	(1,185,000) <sup>103400</sup>		
Net Cash Year of Sale	4,782,283	3,693,114	260,767	
Present Value of Covenant Not to Compete, Etc.	487,061	487,061	-	
Notes Purchased by Sellers	-	-	-	
Estimated Federal Income Tax on Covenant	(194,825)	(194,825)	-	
Less Note Payable to Schroeder	(193,000)	(193,000)		
Total Financial Assets	4,861,520	3,782,351	260,767	

9/25/98  
2:28 PM

**Miller Schroeder, Inc.**  
**Sale**

**Final**

**Assumptions:**

Covenant Not to Compete	1,400,000	4 Years
Base Stock Price	15,000,000	
Book Value Adjustment (See Attached)	(1,242,971)	
Purchase Price of Stock	13,757,029	
Cash Due on Sale	15,000,000	
Cash Repaid (See Attached)	(1,361,502)	
Net Cash Received	13,638,498	
Notes Received	118,531	
Total Consideration for Stock	13,757,029	

Federal Tax Rates: Ordinary	40.0%	40.0%	40.0%
Capital Gain	20.0%	20.0%	20.0%
State Tax Rate	0.0%	9.3%	8.5%
Interest Rate for Present Valuing	8.00%		

Description	Wikner	Iverson	Erickson	Total
	48.74%	48.74%	2.52%	100.00%

Sale of Stock:				
Proceeds	6,704,931	6,704,931	347,167	13,757,029
Basis	(427,977)	(572,500)	(50,000)	(1,050,477)
Transaction Costs	(24,369)	(24,369)	(1,262)	(50,000)
Net Gain	6,252,585	6,108,062	295,905	12,656,552

Share of Notes	48.74%	48.74%	2.52%	100%
----------------	--------	--------	-------	------

**Present Value of Consideration and Other Items:**

Initial Cash Received	7,310,725	①7,310,733	378,542	15,000,000
Cash Repaid Principal & Interest	(680,616)	(680,616)	(32,172)	(1,393,405)
Covenant Not to Compete	72,917	72,917	-	145,833
Less Transaction Costs	(24,369)	(24,369)	(1,262)	(50,000)
Less Taxes	(1,265,381)	(1,800,550)	(84,333)	
Less Loan Payable to Company	(631,000)	(1,185,000)		
Net Cash Year of Sale	4,782,275	3,693,114	260,775	
Present Value of Covenant Not to Compete, Etc.	487,061	487,061	-	
Notes Purchased by Sellers	-	-	-	
Estimated Federal Income Tax on Covenant	(194,825)	(194,825)	-	
Less Note Payable to Schroeder	(193,000)	(193,000)		
Total Financial Assets	4,881,512	3,792,351	260,775	

**Miller Schroeder  
Sale**

**November 6, 1997**

**Final**

**Purchase Price Reconciliation:**

Description		Amount
Base Stock Price		15,000,000
Book Value Adjustment Proposed by Buyers	(1,918,982)	
Global Adjustment	675,991	
Book Value Adjustment to Purchase Price		(1,242,971)
Purchase Price of Stock		13,757,029
Cash Due on Sale		15,000,000
Cash Repaid	Gross Adjustment	(1,274,874)
	Interest	31,903
	Purchase Price of Notes	(118,531)
Notes Purchased by Sellers		118,531
Total Consideration for Stock		13,757,029

**Notes Purchased by Seller:**

Obligor	Book Value		Sellers' Cost	Assumed FMV
	Original	As Adjusted		
Rideau	140,000	-	1	-
Water World, Senior	468,115	117,000	118,531	118,531
Water World, Sub	185,000	-	1	-
Total	793,115	117,000	118,533	118,531

\* The fair market value will be additional proceeds for computing the tax gain on the sale of stock.  
If the notes are collected at other than the FMV, such difference will be a taxable gain or loss.

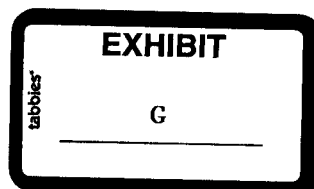
**Reconciliation of Cash Repaid:**

Description	Wikner	Iverson	Erickson	Total
	48.74%	48.74%	2.52%	100.00%
Cash Repaid - Principal	(605,802)	(605,802)	(31,367)	(1,242,971)
Cash Repaid - Interest	(15,549)	(15,549)	(805)	(31,903)
Purchase of Notes	(59,266)	(59,266)		(118,531)
Total	(680,617)	(680,616)	(32,172)	(1,393,405)

)  
 Brian F. Leonard, Trustee, )  
 )  
 Plaintiff, ) BKY Case Nos.  
 ) 02-40284 to 02-40286  
 vs. )  
 )  
 James E. Iverson, )  
 )  
 Defendants. )  
 )

January 23, 2004

**CERTIFIED COPY**



# PROMISSORY NOTE

\$290,000.00

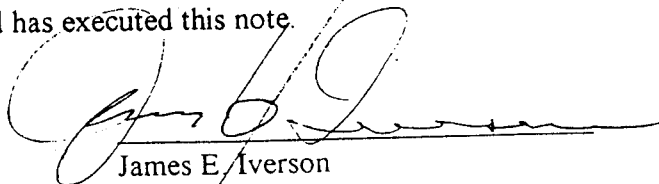
October 31, 1996

FOR VALUE RECEIVED, James E. Iverson, promises to pay MILLER & SCHROEDER, INC., a Minnesota Corporation, at 220 South Sixth Street, Suite 300, Minneapolis, MN 55402, the principal sum not to exceed Two Hundred Ninety Thousand and 00/100 Dollars (\$290,000) or so much as may from time to time be disbursed hereon together with interest thereon from October 31, 1996, at an interest rate of 6.72% per annum. The entire unpaid principal amount together with interest accrued thereon shall become due and payable on October 31, 2001.

If default is made in the payment when due of any part of installment of interest, the entire amount of principal and interest shall become immediately due and payable at the option of the holder of this Note without notice. In the event of any default thereunder, the undersigned agrees to pay the cost of the collection, including reasonable attorney's fees.

This Note shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned has executed this note.

  
James E. Iverson

**PROMISSORY NOTE****\$240,486.00****October 31, 1995**

FOR VALUE RECEIVED, James E. Iverson promises to pay MILLER & SCHROEDER, INC., a Minnesota Corporation, at 226 South Sixth Street, Suite 300, Minneapolis, MN 55402, the principal sum not to exceed Two Hundred Forty Thousand Four Hundred Eight Six and 00/100 Dollars (\$240,486) or so much as may from time to time be disbursed hereon together with interest thereon from October 31, 1995, at an interest rate of 6.31% per annum. The entire unpaid principal amount together with interest accrued thereon shall become due and payable on October 31, 1998.

If default is made in the payment, when due of any part of installment of interest, the entire amount of principal and interest shall become immediately due and payable at the option of the holder of this Note without notice. In the event of any default thereunder, the undersigned agrees to pay the cost of the collection including reasonable attorney's fees.

This Note shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned has executed this note.

  
James E. Iverson

## PROMISSORY NOTE

\$452,651.81

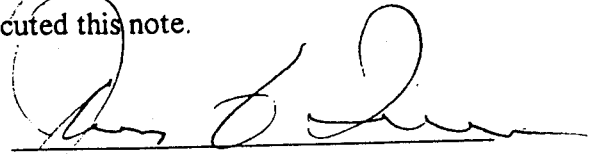
October 31, 1994

FOR VALUE RECEIVED, James E. Iverson, promises to pay to MILLER & SCHROEDER, INC., a Minnesota corporation, at 220 South Sixth Street, Suite 300, Minneapolis, MN 55402, the principal sum not to exceed Four Hundred Fifty Two Thousand Six Hundred Fifty One and 81/100 Dollars (\$452,651.81) or so much as may from time to time be disbursed hereon together with interest thereon from October 31, 1994, at an interest rate of 6.34% per annum. The entire unpaid principal amount together with interest accrued thereon shall become due and payable on October 31, 1997.

If default is made in the payment when due of any part or installment of interest, then the entire amount of principal and interest shall become immediately due and payable at the option of the holder of this Note, without notice. In the event of any default thereunder, the undersigned agrees to pay the costs of the collection, including reasonable attorney's fees.

This Note shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned has executed this note.

  
James E. Iverson

## SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Agreement"), entered into this 11th day of December, 1997 (the "Effective Date"), by and between Roger Wikner, James Iverson and Steven Erickson (hereinafter collectively referred to as the "Sellers"), MI Acquisition Corporation, a Minnesota corporation (the "Company") and the Company's subsidiary, Miller & Schroeder, Inc., a Minnesota corporation ("M&S").

## RECITALS

WHEREAS, the Sellers and the Company entered into a Stock Purchase Agreement dated June 20, 1997 and effective as of June 1, 1997 (the "Stock Purchase Agreement") for the purchase and sale of all of the issued and outstanding stock of M&S; and

WHEREAS, Section 2.3 of the Stock Purchase Agreement provides that the Purchase Price, as defined in the Stock Purchase Agreement, shall be adjusted for the difference in Book Value, as defined in the Stock Purchase Agreement, from January 31, 1997 to July 31, 1997 (the "Purchase Price Adjustment"); and

WHEREAS, the parties hereto have agreed upon the Purchase Price Adjustment and certain terms and conditions related thereto as more specifically provided herein;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

1. Purchase Price Adjustment Payment. The Sellers shall pay to the Company the sum of One Million Two Hundred Seventy-Four Thousand Eight Hundred Seventy-Four Dollars and 10/100 Cents (\$1,274,874.10) (the "Purchase Price Adjustment Payment"), which is the sum of (a) the principal amount of One Million Two Hundred Forty-Two Thousand Nine Hundred Seventy-One Dollars and 10/100 Cents (\$1,242,971.10) plus (b) simple interest from July 31, 1997 through the Effective Date at the rate of 7.0%, which is the rate currently charged to M&S on its primary line of credit at Norwest Bank Minnesota, N.A. The Purchase Price Adjustment Payment shall be made in an aggregate sum on the Effective Date by wire transfer pursuant to the Company's instructions. In the event the Purchase Price Adjustment Payment is not paid on the Effective Date, Sellers, in addition to the Purchase Price Adjustment Payment, shall also make a per diem payment to the Company of Two Hundred Forty-One Dollars and 69/100 Cents (\$241.69) for each day following the Effective Date through and including the day of payment of the Purchase Price Adjustment Payment.

2. Purchase and Sale of Underwater World Bonds and Debentures. The Sellers shall purchase from the Company and the Company shall sell to the Sellers (i) the

Underwater World 13.75% Senior Revenue Bonds Due March 1, 2002 in the principal amount of \$468,115.66 and (ii) the Underwater World 15.4% Subordinated Debentures Due April 1, 2005 in the principal amount of \$185,000.00, all for the sum of One Hundred Eighteen Thousand Five Hundred Thirty Dollars and 83/100 Cents (\$118,530.83) (the "Underwater World Payment"), which is the sum of (a) the principal amount of One Hundred Seventeen Thousand Twenty-Eight Dollars and 92/100 Cents (\$117,028.92) plus (b) one-half of the simple interest from July 31, 1997 through the Effective Date at the rate of 7.0%, which is the rate currently charged to M&S on its primary line of credit at Norwest Bank Minnesota, N.A. The Underwater World Payment shall be made in an aggregate sum on the Effective Date by wire transfer pursuant to the Company's instructions. Upon receipt of the Underwater World Payment, the Company shall deliver to Sellers the certificates representing the Underwater World 13.75% Senior Revenue Bonds Due March 1, 2002 in the principal amount of \$468,115.66 and shall provide such documents and certificates as may be reasonably required by Sellers to evidence the transfer of the Underwater World 15.4% Subordinated Debentures Due April 1, 2005 in the principal amount of \$185,000.00, which are held in book-entry form. In the event the Underwater World Payment is not paid on the Effective Date, Sellers, in addition to the Underwater World Payment, shall also make a per diem payment to the Company of Eleven Dollars and 38/100 Cents (\$11.38) for each day following the Effective Date through and including the day of payment of the Underwater World Payment.

3. Assignment of Rideau Note. M&S hereby assigns and transfers to Sellers all of the rights, title and interests of M&S in, to and under that certain promissory note dated March 14, 1995 in the amount of \$140,000.00 issued to M&S by Rideau Lyons & Co., Inc., as modified and extended on March 14, 1996 and March 14, 1997 (the "Rideau Note"). Sellers hereby accept to such assignment and transfer of the rights, title and interests of M&S in, to and under the Rideau Note. M&S shall provide an endorsement to the Rideau Note in a form satisfactory to the Sellers upon receipt of payment of the Purchase Price Adjustment Payment and the Underwater World Payment.

4. Indemnification. Roger Wikner and James Iverson, jointly and severally, hereby agree to indemnify and hold harmless Company, its subsidiaries and the respective officers, directors, employees and agents of Company and its subsidiaries against and in respect of any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, interest and penalties, costs and expenses (including, but not limited to, reasonable legal fees and disbursements), and any amounts or expenses required to be paid or incurred in connection with any settlement, action, suit, proceeding, claim, appeal, demand, assessment or judgment ("Losses"), resulting or arising from or otherwise related to the following:

- a. the retention or non-disbursement of the 1994 and 1995 tax refunds received by M&S for the real property located at 1964-1970 Rahndcliff Court, Eagan, Minnesota and referred to as The Crossings; and

- b. Section 12 of that certain employment agreement dated February 1, 1994 by and between Miller & Schroeder Financial, Inc. ("M&S Financial") and Timothy Long (the "Employment Agreement"), provided, however, that Messrs. Wikner and Iverson shall be required to indemnify the Company for only one-half of any Losses arising under this Section 4, paragraph b. Notwithstanding the foregoing, in the event the Company incurs Losses pursuant to this Section 4, paragraph b. and receives payment from McDonald & Company ("McDonald") for the hiring of Timothy Long, a former employee of M&S Financial, by McDonald, the Company shall pay Messrs. Wikner and Iverson one-half of any such payment received by the Company from McDonald, provided, however, that such payment by the Company to Messrs. Wikner and Iverson shall in no event exceed the amount of Losses for which Messrs. Wikner and Iverson indemnified the Company pursuant to this Section 4, paragraph b. Sellers hereby acknowledge and agree that they will not communicate, in any method or manner, or cause or direct any person or entity to communicate on their behalf, with McDonald, or the employees, directors, officers, shareholders or agents thereof, and further acknowledge and agree that the Company and M&S Financial shall, in their sole discretion, direct all communications and negotiations with McDonald related to the termination of employment of Timothy Long and other employees of M&S Financial formerly located in Ohio and the hiring of such employees by McDonald.

5. Mutual Release. The parties hereto agree to the mutual release and discharge of any and all claims, demands, obligations, actions, causes of action, damages, costs, debts, liabilities, or expenses arising under or related to Section 2.3 of the Stock Purchase Agreement. The release contained herein shall not apply to and shall not affect the parties' rights to enforce (i) the remaining terms of the Stock Purchase Agreement, (ii) any ancillary agreement to the Stock Purchase Agreement, including, but not limited to, any employment agreement or noncompetition agreement, or (iii) the terms of this Agreement.

6. Confidentiality. The parties hereto agree to keep the terms and conditions of this Agreement confidential and not disclose them to any person other than taxing authorities, attorneys, or accountants as necessary or as required by law, or as, to Sellers, the immediate families thereof.

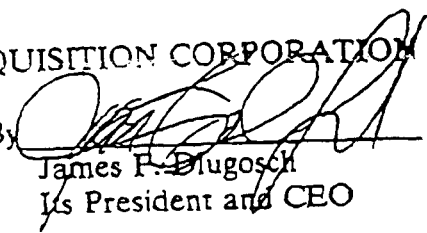
7. Miscellaneous.

- a. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties, with respect to the subject matter hereof.
- b. Counterparts. This Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

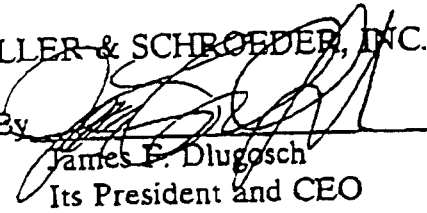
- c. Section Headings; Construction. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without reference to the choice of law principles thereof.

IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the parties hereto as of the date first above written.

MI ACQUISITION CORPORATION

By   
James F. Dlugosch  
Its President and CEO

MILLER & SCHROEDER, INC.

By   
James F. Dlugosch  
Its President and CEO

\_\_\_\_\_  
Roger Wikner

\_\_\_\_\_  
James Iverson

\_\_\_\_\_  
Steven Erickson

#### CONSENT OF SPOUSE:

The undersigned, the spouse of James Iverson, hereby appoints James Iverson as her attorney-in-fact in respect to the exercise of any rights or discharge of obligations under this Agreement and agrees to be bound by the provisions of this Agreement insofar as such spouse may have any rights under the Agreement or the Stock Purchase Agreement under the laws of the State of California or other laws relating to community, separate or marital property in effect in California or in the state of such spouse's residence as of the date of the Agreement.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

FROM: LEONARD, STREET &amp; DENARD

(WED) 12. 10 '97 17:03/ST 16:53/NO. 4260433702 P 12

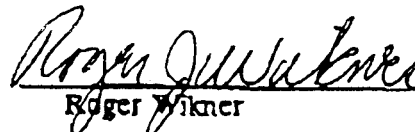
IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the parties hereto as of the date first above written.

## MI ACQUISITION CORPORATION

By \_\_\_\_\_  
James F. Dlugosch  
Its President and CEO

## MILLER &amp; SCHROEDER, INC.

By \_\_\_\_\_  
James F. Dlugosch  
Its President and CEO

  
Roger Winkler

\_\_\_\_\_  
James Iverson

\_\_\_\_\_  
Steven Erickson

## CONSENT OF SPOUSE:

The undersigned, the spouse of James Iverson, hereby appoints James Iverson as her attorney-in-fact in respect to the exercise of any rights or discharge of obligations under this Agreement and agrees to be bound by the provisions of this Agreement insofar as such spouse may have any rights under the Agreement or the Stock Purchase Agreement under the laws of the State of California or other laws relating to community, separate or marital property in effect in California or in the state of such spouse's residence as of the date of the Agreement.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the parties hereto as of the date first above written.

MI ACQUISITION CORPORATION

By James F. Dlugosch  
Its President and CEO

MILLER & SCHROEDER, INC.

By James F. Dlugosch  
Its President and CEO

Roger Wilmer

James Iverson

Steven Erickson

CONSENT OF SPOUSE:

The undersigned, the spouse of James Iverson, hereby appoints James Iverson as her attorney-in-fact in respect to the exercise of any rights or discharge of obligations under this Agreement and agrees to be bound by the provisions of this Agreement insofar as such spouse may have any rights under the Agreement or the Stock Purchase Agreement under the laws of the State of California or other laws relating to community, separate or marital property in effect in California or in the state of such spouse's residence as of the date of the Agreement.

PATRICIA IVERSON  
(Print Name)

Patricia Iverson  
(Signature)

IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the parties hereto as of the date first above written.

## MI ACQUISITION CORPORATION

By \_\_\_\_\_  
James F. Dlugosch  
Its President and CEO

## MILLER &amp; SCHROEDER, INC.

By \_\_\_\_\_  
James F. Dlugosch  
Its President and CEO

\_\_\_\_\_  
Roger Wikner

\_\_\_\_\_  
James Iverson

  
\_\_\_\_\_  
Steven Erickson

## CONSENT OF SPOUSE:

The undersigned, the spouse of James Iverson, hereby appoints James Iverson as her attorney-in-fact in respect to the exercise of any rights or discharge of obligations under this Agreement and agrees to be bound by the provisions of this Agreement insofar as such spouse may have any rights under the Agreement or the Stock Purchase Agreement under the laws of the State of California or other laws relating to community, separate or marital property in effect in California or in the state of such spouse's residence as of the date of the Agreement.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

## ADDENDUM TO EMPLOYMENT AGREEMENT

ADDENDUM TO EMPLOYMENT AGREEMENT dated July 31, 1997, between James Iverson ("Iverson") and Miller & Schroeder Financial, Inc ("M&S").

1. Employment Relationship.

1.1 Iverson will continue as an Executive Vice President of the Company, subject to the direction of the Board of Directors of the Company.

2. Term. The term of the Employment Agreement terminates on October 31, 2000.

3. Compensation and Benefits During the Term.

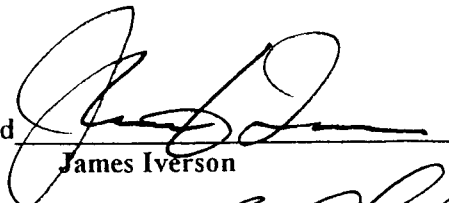
3.1 Base Salary. Effective November 1, 2000, Iverson shall be paid a base salary of One Hundred Thousand and No/100 Dollars (\$100,000), on a month to month basis. Iverson will work on a part-time basis, approximately 25 hours per week.

3.2 Bonus. Iverson shall be eligible for a performance bonus based on individual, office and corporate performance results.

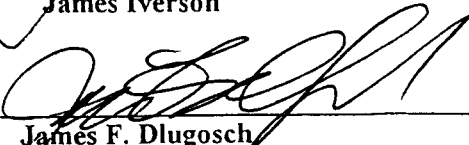
4. Termination.

4.6 Termination of Compensation. Compensation and benefits pursuant to Sections 3.1, 3.2, 3.6 and 3.7 will terminate on October 31, 2000.

4.7 Severance. Severance payments of \$7,100 per month will commence on November 30, 2000 and continue through July 31, 2004.

Signed   
James Iverson

Dated 9-28-2000

Signed   
James F. Dlugosch  
Miller & Schroeder Financial, Inc.

Dated 09-28-00

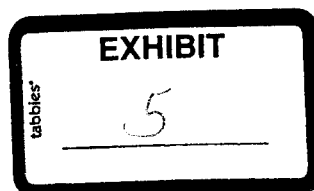


EXHIBIT 14  
WITNESS IVERSON  
DATE 1-23-04  
KRAMM&ASSOCIATES  
REALTIME REPORTING

## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** ("Agreement") is made by and between **MILLER & SCHROEDER, INC.**, a Minnesota corporation ("Company"), and **JAMES IVERSON** ("Iverson") and is dated July 31, 1997.

### WITNESSETH:

**WHEREAS**, Company is a Minnesota corporation engaged in the business of financial services;

**WHEREAS**, MI Acquisition Corporation ("MI") anticipates acquiring all of the issued and outstanding shares of capital stock of Company effective as of this 21st day of July, 1997 (the "Acquisition"), pursuant to that certain stock purchase agreement dated June 20, 1997 and effective as of June 1, 1997, among Roger Wikner, James Iverson and Steven Erickson and MI;

**WHEREAS**, prior to the Acquisition, Iverson owned 49% of the capital stock of Company and Iverson possesses certain unique skills, talents, contacts, judgment and knowledge of the Company's business, strategies and objectives;

**WHEREAS**, both parties recognize the critical importance to the Company, its employees and investors, of preserving the confidentiality of the Company's trade secrets and confidential information, and restricting Iverson's ability to compete with the Company or any of its affiliates, successors or assigns (the "Company Group");

**WHEREAS**, Iverson understands that this Agreement shall be effective against Company only upon the closing of the Acquisition (the "Closing Date"); and

**WHEREAS**, Company desires to retain Iverson in the capacity and on the terms and conditions hereinafter set forth, and Iverson has agreed to accept such terms and conditions.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises hereinafter contained, the parties hereto agree as follows:

1. Employment Relationship.

1.1 During the Term, as defined at Section 2 hereof, Company hereby employs Iverson as an Executive Vice President, subject to the direction of the Board of Directors of the Company.

1.2 During the Term, Iverson shall report and be responsible to the President of the Company or such other person as he may designate. Iverson hereby

accepts such employment described above and agrees to devote his loyalty, skills and full-time efforts to the conduct of the Company's business operations.

2. Term. Iverson's services shall commence on the Closing Date and shall continue under the terms hereof until October 31, 2000 (the "Term").

3. Compensation and Benefits During the Term. For all services rendered by Iverson to Company during the Term, Iverson shall be compensated by Company in accordance with the terms and conditions set forth in this Section 3.

3.1 Base Salary. Iverson will be paid a base salary of Two Hundred Eighty-Six Thousand and No/100 Dollars (\$286,000.00) per year for each of the three (3) years of the Term ("Base Salary") which shall be payable in arrears on the 15th and the last day of each month. Company's Board of Directors shall review Iverson's Base Salary annually, and may, within its sole discretion, raise Iverson's Base Salary.

3.2 Bonus. Iverson shall be entitled to an annual bonus based on a percentage of the pre-tax profits of the following accounting centers:

Solana Beach Underwriting  
Pasadena Underwriting  
Seattle Underwriting  
Self-Insurance Group  
Solana Beach Retail Sales  
Solana Beach Trading  
Solana Beach Administration

The pre-tax profits of each accounting center will be determined by the Company in its sole discretion. The annual bonus will be paid on the basis of consolidated year-end pre-tax profits of the aforementioned centers at the following rates:

<u>Year-End Pre-Tax Profits</u>	<u>Annual Bonus Percentage</u>
\$0-\$500,000	5%
\$500,001-\$1,000,000	10%
\$1,000,001-\$2,500,000	15%
\$2,500,001+	10%

To illustrate, using 1996 year-end pre-tax profits of the aforementioned accounting centers of approximately \$1,870,000, the annual bonus would be calculated as follows:

<u>Year-End Pre-Tax Profits</u>	<u>Annual Bonus Percentage</u>	<u>Annual Bonus Amount</u>
\$0-\$500,000	5%	\$ 25,000
\$500,001-\$1,000,000	10%	\$ 50,000
\$1,000,001-\$1,870,000	15%	<u>\$130,500</u>
Total Annual Bonus		\$205,500

3.3 Fringe Benefits. Iverson shall be entitled to those employee benefits as are available to all other employees of Company, and such other benefits as determined by written action of the Board of Directors.

3.4 Expense Reimbursements. Iverson is authorized to incur reasonable expenses, including travel expense, in connection with the business of the Company. Company will reimburse Iverson for all such reasonable expenses.

3.5 Vacation. Iverson shall be entitled to six weeks of vacation during each year of this Agreement.

3.6 Automobile. Iverson shall be entitled to the use of a Company-owned automobile, subject to the Company's normal policies for the use of such automobiles.

3.7 Club Dues. Company shall reimburse Iverson for membership dues paid to RSF Farms Golf, Inc.

#### 4. Termination.

4.1 Termination for Cause. Company may terminate Iverson for Cause, effective upon notice in writing to Iverson. Company shall not have the right to terminate Iverson without cause. "Cause," for purposes of this Agreement, is defined as an indictment, charge or admission of a felony, fraud against Company, misappropriation of Company's assets, embezzlement or failure to satisfy reasonable criteria established by the President of the Company. If Company intends to terminate Iverson for Cause because Iverson fails to satisfy reasonable criteria established by the Company's President, Company shall first give Iverson notice of his failure to satisfy such criteria and a reasonable opportunity to cure such deficiency(ies). If the Company terminates Iverson under this Section 4.1, other than because Iverson fails to satisfy reasonable criteria established by the Company's President, Iverson's employment shall immediately terminate. In the event Iverson's employment is terminated pursuant to this Section 4.1, the Company shall be entitled to pursue any and all legal and equitable remedies available to it, including, without

limitation, recovery of any loss, damage or expense arising out of or in connection with the events surrounding or leading up to said termination.

4.2 Resignation. Iverson may terminate his employment pursuant to this Agreement at any time upon thirty (30) days' written notice to Company. Iverson shall not be paid any monies pursuant to Section 3 hereof following such termination.

4.3 Disability. Iverson's employment pursuant to this Agreement shall be deemed terminated upon the total and permanent disability ("Disability") of Iverson. The determination of whether Iverson has suffered a Disability shall be the inability of Iverson to fully perform his duties hereunder for a period of 90 days or more (with any working periods of less than 15 business days not to be construed as interrupting such disability period). All determinations as to whether Iverson has suffered a Disability shall be determined by the Board of Directors of Company in its reasonable discretion.

4.4 Death. Iverson's employment pursuant to this Agreement shall be deemed terminated upon the death of Iverson.

4.5 Expiration of Term. Iverson's employment pursuant to this Agreement shall terminate upon the expiration of the Term without any written renewal or extension thereof executed by the parties.

4.6 Termination of Compensation and Benefits. Except as required by law or as otherwise provided in this Agreement, Iverson shall not be entitled to the continuation of the Base Salary under Section 3.1, Bonus under Section 3.2, fringe benefits under Section 3.3, expense reimbursement (unless incurred in the ordinary course of business prior to termination) under Section 3.4, automobile expenses under Section 3.6 or club dues under Section 3.7, after termination of his employment hereunder or the conclusion of the Term.

4.7 Severance. In the event Iverson's employment is terminated for any reason, Iverson shall be entitled to severance. The amount of the severance payments shall be equal to \$7,100.00 per month. The monthly payments shall commence on the last day of the first month following the month in which Iverson's employment terminates and continue for that period of time from and including such month through July, 2004. Notwithstanding the foregoing, in the event Iverson breaches any of the provisions in Section 5, 6 or 7 of this Agreement or any provision of the Noncompetition Agreement by and between the Company and Iverson of even date herewith, Iverson shall not be entitled to receive and the Company shall not be obligated to pay any severance; provided, however, Iverson shall continue to be obligated to abide by the terms of this Agreement and the Noncompetition Agreement.

4.8 Materials. Upon termination under this Section 4, Iverson shall return to Company any materials and property owned by Company, and in the event of Iverson's failure to do so, Company may, in addition to any other remedy provided by law, withhold any amounts due Iverson until full compliance with this provision. If Company believes that Iverson has failed to return certain materials or property to Company, Company shall give Iverson notice of such materials or property with reasonable specificity. Upon receipt of such materials and property, or evidence satisfactory to Company that Iverson does not have such materials or property, Company shall promptly forward the amounts owed Iverson to Iverson.

4.9 Life Insurance. Upon the termination of Iverson's employment for any reason other than his death, the Company shall transfer the existing life insurance policy on the life of Iverson which the Company owns to Iverson in exchange for a cash payment equal to the lesser of the cash surrender value for such policy at the time of the transfer or the cash surrender value on the date hereof.

5. Confidential Information.

5.1 Definition. For purposes of this Agreement, "Confidential Information" means information or material, techniques, formulas, processes or procedures, which are proprietary to Company Group or designated as Confidential Information by Company Group and not generally known independently by non-Company Group personnel, which Iverson developed or has or may obtain knowledge of or access to through or as a result of his relationship with the Company Group (including, but not limited to, information conceived, originated, discovered, improved or developed in whole or in part by Iverson). In the event Iverson is uncertain whether any particular information constitutes Confidential Information, he will seek clarification from Company.

5.2 Confidentiality Covenant. Iverson shall not, both during and after the Term, directly or indirectly divulge, communicate, use to the detriment of the Company Group, or for the benefit of any other person or entity, or misuse any Confidential Information. Confidential Information shall not be used by Iverson for any purpose whatsoever except as required to perform the work Company requests under the terms of this Agreement. Company reserves the right to demand the return of any such information at any time. Upon any termination of this Agreement, Iverson shall immediately return any such information in his possession to Company. This paragraph shall survive the termination of this Agreement indefinitely.

6. Solicitation of Customers. During the Term, Iverson shall not directly or indirectly, through an existing or to be existing corporation, unincorporated business, affiliated party, successor employer, or otherwise:

- a. for the benefit of any person or entity engaged in a business which is competitive with the business of any member of the Company Group

during the term of his employment with the Company, reveal the name or related information of, or solicit any of the customers of the Company Group, whether such customers are currently customers or become customers during the Term; or

b. interfere with, or endeavor to entice from any member of the Company Group, any of the customers of the Company Group, whether such customers are currently customers or become customers during the Term.

7. Solicitation of Employees. During the Term, Iverson shall not directly or indirectly, through an existing or to be existing corporation, unincorporated business, affiliated party, successor employer or otherwise, solicit, hire for employment, or work with, on a part-time, consulting, advising or any other basis, other than on behalf of the Company:

a. any officer, vice president or executive employee who is employed by a member of the Company Group, at the time of such solicitation, hire or work or during the six months prior thereto; or

b. any other employee, or independent contractor of a member of the Company Group at the time of such solicitation, hire or work or during the six months prior thereto, if such employee or independent contractor is to directly or indirectly engage in a business which is competitive with the business of a member of the Company Group is engaged on the date hereof or during the remaining term of his employment with the Company.

Company shall have the right to enforce the provisions of this Section, along with Sections 5 and 6, by applying for and obtaining temporary and permanent restraining orders or injunctions from a court of competent jurisdiction without the necessity of filing a bond therefor. In any such court action, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the other party.

8. Notices. All notices given hereunder shall be in writing and shall be personally served or sent by registered or certified mail, return receipt requested, addressed as follows:

To Company:

MILLER & SCHROEDER, INC.  
Attn: James F. Dlugosch  
Pillsbury Center  
220 South Sixth Street  
Suite 300  
Minneapolis, MN 55402

To Iverson:

James Iverson  
3123 Cerros Redondos  
P.O. Box 863  
Rancho Santa Fe, CA 92067

9. Miscellaneous.

9.1 Complete Agreement. This Agreement is the entire Agreement between the parties concerning the subject matter hereof and supersedes and replaces any existing arrangement between the parties hereto relating to Iverson's employment relationship with Company. Company and Iverson hereby acknowledge that there are no other agreements regarding Iverson's employment, apart from this Agreement.

9.2 No Waiver. No failure on the part of Company or Iverson to exercise, and no delay in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right hereunder by Company or Iverson preclude any other or further exercise thereof or the exercise of any other right.

9.3 Severability. It is further agreed and understood by the parties hereto that if any part, term or provision of this Agreement should be held unenforceable in the jurisdiction in which either party seeks enforcement of the contract, it shall be construed as if not containing the invalid provision or provisions, and the remaining portions or provisions shall govern the rights and obligations of the parties.

9.4 Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Minnesota, without regard to conflicts of law provisions.

9.5 Assignment. This Agreement is personal in nature and cannot be assigned by Iverson. This Agreement can be assigned by Company. The terms, conditions and covenants herein shall be binding upon the heirs and personal representatives of Iverson, and the successors, assigns of Company and any subsidiary or "affiliate" of Company.

9.6 Remedies Not Exclusive. No remedy conferred hereunder is intended to be exclusive, and each shall be cumulative and shall be in addition to every other remedy. The election of any one or more remedies shall not constitute a waiver of any other remedy.

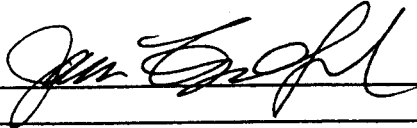
9.7 Survival. Iverson's obligations under Section 5 shall survive the termination of his employment indefinitely.

9.8 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement, and shall not be used in construing it.

IN WITNESS WHEREOF, the parties have duly executed this Employment Agreement as of the date and year first above written.

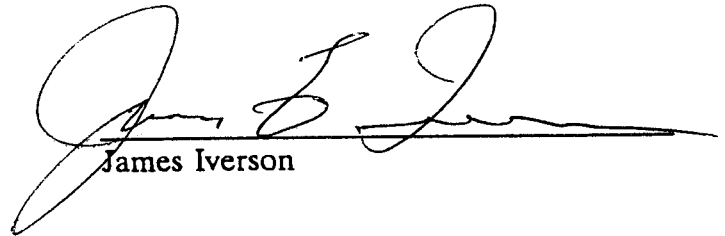
COMPANY:

MILLER & SCHROEDER, INC.

By 

Its President and  
Chief Executive Officer

IVERSON:

  
James Iverson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

Chapter 7 Case

In re:

SRC Holdings Corporation, f/k/a Miller &  
Schroeder Financial, Inc. and its subsidiaries,

BKY Case Nos. 02-40284 to 02-40286

Jointly Administered

Debtor.

Brian F. Leonard, Trustee,

Plaintiff,

vs.

**AFFIDAVIT OF JAMES E. IVERSON**

James E. Iverson,

Defendant.

STATE OF CALIFORNIA )  
COUNTY OF Ventura ) ss.

James E. Iverson, being first duly sworn upon oath, deposes and states as follows:

1. Between the period of November 1, 2000 and August 31, 2001, your Affiant was employed by Miller & Schroeder, Inc. as an Executive Vice President on a part-time basis pursuant to an employment contract. In addition, pursuant to the Non-Competition Agreement entered into with Miller & Schroeder, Inc. on July 31, 1997, your Affiant received monthly payments of \$1,200 per month, at the end of each month, on a regular basis through October 31, 2001. These payments were made in the ordinary course of business between your Affiant and the Debtor during which your Affiant continued to honor the agreement not to compete with the Debtor.

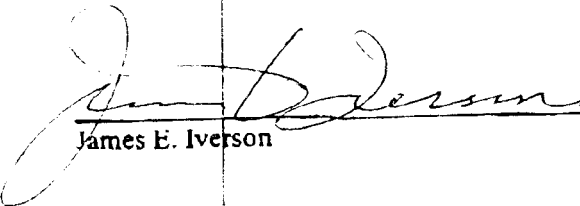
2. Your Affiant's employment with the Debtor was terminated on August 31, 2001, and,

with the consent of the Debtor, became employed by The Marshall Group.

3. Although your Affiant retained the title of Executive Vice President, I was not an officer as defined by the company bylaws, nor did your Affiant retain any control over policymaking decisions, nor governance of the company.

FURTHER YOUR AFFIANT SAITH NOT.

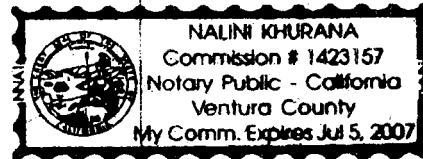
Dated: 3-19-04

  
James E. Iverson

Subscribed and sworn to before me

this 19 day of March, 2004

N. Khurana  
Notary Public



572047.1

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Chapter 7 Case

SRC Holding Corporation,  
f/k/a Miller & Schroeder Financial, Inc.,  
and its subsidiaries,

BKY Case Nos. 02-40284 to 02-40286

Jointly Administered

Debtor.

Brian F. Leonard, Trustee,

ADV Case No. 03-4155

Plaintiff,

vs.

James E. Iverson,

Defendant.

**UNSWORN CERTIFICATE OF SERVICE**

I, Tara Leupke, declare under penalty of perjury that on March 22, 2004, I mailed copies of the following:

1. Notice of Motion and Motion for Summary Judgment;
2. Defendant's Memorandum of Law in Support of Motion for Summary Judgment;
3. Affidavit of Joseph W. Lawver;
4. Affidavit of James E. Iverson; and
5. Proposed Order

by first class mail, postage prepaid, to:

Matthew R. Burton  
Leonard, O'Brien, Wilford, Spencer & Gale, Ltd.  
100 South Fifth Street  
Suite 1200  
Minneapolis, MN 55402-1216

by enclosing a true and correct copy of the same in an envelope, postage prepaid, and depositing same in the United States mail.

Dated: March 22, 2004

/e/ Tara Leupke

Tara Leupke

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

\_\_\_\_\_  
In re:

Chapter 7 Case

SRC Holding Corporation,  
f/k/a Miller & Schroeder Financial, Inc.,  
and its subsidiaries,

BKY Case Nos. 02-40284 to 02-40286

Jointly Administered

Debtor.

\_\_\_\_\_  
Brian F. Leonard, Trustee,

ADV Case No. 034155

Plaintiff,

vs.

**ORDER**

James E. Iverson,

Defendant.  
\_\_\_\_\_

The above-captioned matter came on before the Court on the motion of Defendant James E. Iverson for Summary Judgment. Joseph W. Lawver appeared on behalf of the Movant. Other appearances were noted on the record.

Based upon all the files and records herein, together with the arguments of counsel,

IT IS HEREBY ORDERED:

1. Defendant's motion is granted.
2. Pursuant to Rule 7056 of the Federal Rules of Bankruptcy procedure, it appearing there are no genuine issues of material fact, and that Defendant is entitled to judgment as a matter of law Defendant James E. Iverson is entitled to judgment dismissing Counts I through VII to Plaintiff's Complaint.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Nancy C. Dreher  
U.S. Bankruptcy Judge

572079.1